

LINE-ITEM VETO: PERSPECTIVES ON APPLICATIONS AND EFFECTS

HEARING BEFORE THE COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES ONE HUNDRED NINTH CONGRESS SECOND SESSION

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LINE-ITEM VETO: PERSPECTIVES ON APPLICATIONS AND EFFECTS

THURSDAY, MAY 1, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC.

The committee met, pursuant to call, at 10:03 a.m., in room 210, Cannon House Office Building, Hon. Jim Nussle (chairman of the committee) presiding.

Members present: Representatives Nussle, Ryun, Hensarling, Ryan, Conaway, Campbell, Spratt, Moore, Neal, Ford, Capps, Baird, Cooper, and Cuellar.

Chairman NUSSLE. Good morning, and welcome everyone.

Today's hearing is the first of two hearings that this committee will hold on the issue regarding the line-item veto prior to marking up the legislative line-item veto, which is a bill which has been introduced by Paul Ryan of this committee. The gentleman from Wisconsin is here, and I appreciate his leadership on the issue.

Today's discussion—I will yield to the gentleman from Wisconsin in a moment, because it is his legislation, but let me just make a couple of observations.

Today's discussion will focus on perspectives, applications, the effect of the practice, both past use of the practice as well as the possible use of the practice in the future.

I am pleased that we have several experts on the issue, including and first our former—I was about to say our former friend and colleague—our former colleague, current friend, Pat Toomey, who was a member of this committee for a number of years, and I am sure he—I hope he didn't break out into hives when he walked back into the room. I know that can occur for some Members who used to serve on this committee; I hope it didn't happen in this case.

Pat Toomey is serving at the president of Club for Growth. We welcome the gentleman from Pennsylvania back to the committee.

We have many others who have been here before: Tom Schatz, who is the president of Citizens against Government Waste. We appreciate his leadership and testimony on behalf of this committee and before this committee as well.

Ed Lorenzen, the policy director from the Concord Coalition, we welcome you; as well as James Horney, who is from the Center of Budget and Policy Priorities. Welcome back to the committee. We look forward to hearing your testimony.

Just as a kind of a brief history, let me suggest that back in 1994, as many of you may recall, the House Republicans included in our contract with America a version of the line-item veto, which,

after much discussion between the House and the Senate, and with the input of several State Governors, Congress enacted in the spring of 1996 the Line Item Veto Act authorizing the President to cancel discretionary appropriations, any new item of direct spending, entitlements or other mandatory programs, and certain limited tax benefits. If Congress disagreed with the President's action, it could pass a resolution of disapproval within 30 days, but the President could then veto that resolution and force an override vote in each House.

That is pretty much how it worked. But as most of you may also recall, in 1998 the Supreme Court ruled that the Line Item Veto Act was unconstitutional, noting that in the two applications of the veto reviewed by the Court, the cancellation authority provided by the President by the veto, it violated the Constitution, and thus the law was stricken from the books at that time.

The legislative Line Item Veto Act that we will hopefully soon consider must not only provide the effective mechanism for reducing unnecessary Federal spending, but it must also be able to overcome the constitutional implementation concerns that all of us share, and that we hope can be overcome so that it can be used appropriately.

As I mentioned a moment ago, the committee hopes to hold some hearings on this, as well as have an opportunity to possibly mark this up. This goes in conjunction with other works that we are having with regard to curbing earmark abuse, all in a hope—and we are seeing it borne out in the numbers—of actually reducing the deficit, which it is coming down. We want it to come down as fast as possible and as responsibly as possible, and we believe that these are some of the mechanisms that can be used in order to accomplish that.

[The prepared statement of Chairman Nussle follows:]

PREPARED STATEMENT OF HON. JIM NUSSLE, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF IOWA

Whenever Congress has faced rapid spending growth combined with budget deficits, we've seen proposals to adopt a presidential "line-item veto" emerge. In general, the intent of these proposals has been to reduce unnecessary spending included in Congressionally-passed legislation by allowing the president to strike out individual spending items effectively removing them from a bill.

BRIEF HISTORY

Back in 1994, as many of you recall, House Republicans included in our "Contract with America" a version of the line-item veto which after much discussion between the House and Senate, and with the input of several State governors Congress enacted in the Spring of 1996.

The Line Item Veto Act authorized the president to cancel discretionary appropriations, any new item of direct spending (entitlements and other mandatory programs), and certain limited tax benefits.

If Congress disagreed with the president's action, it could pass a resolution of disapproval within 30 days. But the president could then veto that resolution and force an override vote in each House.

PROBLEM

But as most of you will also recall, in 1998, the Supreme Court ruled the Line Item Veto Act unconstitutional, noting that in the two applications of the veto reviewed by the Court, the cancellation authority provided to the president by the veto violated the Constitution and thus, the law was stricken from the books.

THE LEGISLATIVE LINE ITEM VETO ACT

The legislation we will soon consider The Legislative Line Item Veto Act of 2006 must not only provide an effective mechanism for reducing unnecessary Federal spending, it must also be able to overcome constitutional and implementation concerns.

As I mentioned a moment ago, this Committee hopes to hold two hearings prior to marking up the legislation. Today we'll hear from our panel of experts on how the line-item veto might assist us in addressing earmarks and curbing future laws that might increase the deficit.

Then, following the Memorial Day Recess, we plan to look at constitutional issues surrounding the legislation which I imagine will be a both a very spirited and informative discussion.

And I look forward to hearing the thoughts of our witnesses and our Members on all these issues.

Chairman NUSSLE. Let me yield briefly to the gentleman from Wisconsin for any comments he would like to make, since this is his bill.

Mr. RYAN. I thank the chairman for yielding, and I ask unanimous consent that my full opening statement be included in the record.

Chairman NUSSLE. And without objection, all Members' opening statements will be put in the record as well.

Mr. RYAN. I will be fairly brief. No. 1, I want to thank the witnesses for coming. Ed Lorenzen, it is nice to see you here as well, because we have worked on this together over the years when you worked with Charlie Stenholm.

This bill is not a new idea. This is virtually identical to the Stenholm-Spratt bill that was introduced and, as Ed just told me, passed the House in 1993 in the 103d Congress, very similar to the Stenholm-Kasich-Penny bill, very much the same exact bill that I had with Charlie Stenholm in 2004. In every case these bills have been bipartisan.

I think most people acknowledge that the rescission system we have today doesn't work. This bill fixes the rescission system so the rescissions actually work. And I am extremely sensitive to the constitutional issues. I actually agree with the Supreme Court ruling of 1996. I do believe that that version of the line-item veto, now having read the case, did unnecessarily transfer too much power from the legislative to the executive branch. This goes in a different direction.

We actually have been talking to a lot of different constitutional scholars, including Chuck Cooper, who is the man who argued against the Supreme Court case in 1996, who is a strong supporter of this version of the line-item veto. This makes sure that Congress has the final say-so, Congress is the final arbiter of these things, but it makes sure that the rescission requests by the President don't go ignored like they all too often have ignored.

And I will finish with this last point which is what we are trying to do is bring transparency and accountability to the way we spend taxpayer dollars. And we have the beginning of the system and the end of the system. What I mean when I say that is the earmark reform legislation we are trying to pass, we are trying to bring more transparency and accountability to the front end of the spending process here in Congress, but we don't have enough transparency and accountability at the back end of the final stages of the spending process. The choices we are given in Congress is one

vote up or down on a conference report, which is usually typically a massive spending bill or tax bill. Then the President has the same kind of choice, sign or veto this entirely large bill. There is no in-betweens, no chances to revisit something that would have gotten snuck in in a conference report or something like that.

So I think what this does is it brings a very good complement to the process by bringing more transparency and accountability at the back end of the spending process, and this complements our earmark reforms that are working its way through Congress to bring transparency and accountability at the front of the process so the entire congressional spending and taxing process has much more needed transparency and accountability so our constituents can see how their tax dollars are being spent, and that we, as Members of Congress, have an opportunity to visit these issues on an individual basis, and I think that is very important. We are air-tight on the Constitution, and I would be happy to answer questions that people have, those things.

But I want to thank the witnesses for coming, and I want to thank the chairman for having this hearing.

Chairman NUSSLE. I thank the gentleman from Wisconsin.

[The prepared statement of Mr. Ryan follows:]

PREPARED STATEMENT OF HON. PAUL RYAN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF WISCONSIN

Chairman Nussle, thank you for holding a hearing today on H.R. 4890, the Legislative Line-Item Veto Act of 2006. This legislation would provide the President with the authority to single out wasteful spending items and narrow special-interest tax breaks included in legislation that he signs into law and send these specific items back to Congress for a timely vote. Unlike the line-item veto authority provided to President Clinton in 1996, H.R. 4890 passes constitutional muster because it requires an up-or-down vote in both chambers of Congress under an expedited process in order to effectuate the President's proposed rescissions.

I appreciate the Budget Committee's interest in this issue and am looking forward to this and other upcoming hearings on H.R. 4890. This series of hearings will ensure that we produce effective and constitutional legislation that will help the President and Congress work together to reduce the federal budget deficit. Today, I am very interested in the views of our distinguished witnesses as to the impact that this bill would have on Congress' spending habits. It is my strong belief that H.R. 4890 will take an important step toward bringing greater transparency, accountability and a dose of common sense to the federal budget process.

THE PROBLEM

The amount of pork-barrel spending included in the federal budget continues to increase every year. According to Citizens Against Government Waste (CAGW), the federal government spent \$29 billion on 9,963 pork-barrel projects in Fiscal Year 2006 (FY 2006), an increase of 6.3% from 2005, and an increase of over 900% since 1991. Overall, the federal government has spent \$241 billion on pork-barrel projects between 1991 and 2005, an amount greater than two-thirds of our entire deficit in FY 2005. This includes irresponsible spending on items such as the \$50 million Rain Forest Museum in Iowa; \$13.5 million to pay for a program that helped finance the World Toilet Summit; and \$1 million for the Waterfree Urinal Conservation Initiative.

Many of these pork-barrel spending projects are quietly inserted into the conference reports of appropriations bills where Congress is unable to eliminate them using the amendment process. In fact, the only time that Congress actually votes on these items is during an up-or-down vote on the entire conference report, which includes spending for many essential government programs in addition to the pork-barrel earmarks. In this situation, it is very difficult for any Member to vote against an appropriations bill that, as an overall package, may be quite meritorious, despite the inclusion of wasteful spending items.

Unfortunately, the current tools at the President's disposal do not enable him to easily combat these wasteful spending items either. Even if the President identifies numerous pork-barrel projects in an appropriations bill, he is unlikely to use his veto power because it must be applied to the bill as a whole and cannot be used to target individual items. This places the President in the same dilemma as Members of Congress. Does he veto an entire spending bill because of a few items of pork when this action may jeopardize funding for our troops, for our homeland security or for the education of our children?

The President's ability to propose the rescission of wasteful spending items under the Impoundment Control Act of 1974 has been equally ineffective at eliminating wasteful spending items. The problem with the current authority is that it does not include any mechanism to guarantee congressional consideration of a rescission request and many Presidential rescissions are ignored by the Congress. In fact, during the 1980's, Congress routinely ignored President Reagan's rescission requests, failing to act on over \$25 billion in requests that were made by the Administration. The historic ineffectiveness of this tool has deterred Presidents from using it with any regularity.

SUMMARY OF H.R. 4890, THE LEGISLATIVE LINE-ITEM VETO ACT OF 2006

I introduced H.R. 4890, the Legislative Line-Item Veto Act of 2006, on March 7, 2006. This legislation, which currently has the support of 104 bipartisan cosponsors in the House, is based on the Administration's proposal to provide line-item veto authority to the President and is the product of discussions that I and my congressional colleagues have had with the White House since the President announced his intent to seek line-item veto authority in the State of the Union Address on January 31, 2006.

The Legislative Line-Item Veto Act is very similar to an expedited rescissions amendment that I offered during the consideration of H.R. 4663 on June 24, 2004, with my former colleague Representative Charlie Stenholm, a Democrat from Texas. Like H.R. 4890, this amendment would also have allowed the President to propose the elimination of wasteful spending items subject to congressional approval under an expedited process. Although this amendment failed to pass the House, it attracted the support of 174 Members of Congress, including 45 Democrats. A similar provision is also included in Section 311 of the Family Budget Protection Act, legislation that I introduced along with Congressman Jeb Hensarling of Texas, Congressman Chris Chocola of Indiana, and former Congressman Christopher Cox of California during 2004 and again in 2005.

If passed, H.R. 4890 would give the President the ability to put on hold wasteful discretionary spending, wasteful new mandatory spending, or new special-interest tax breaks (those that affect less than 100 beneficiaries) after signing a bill into law. The President could then ask Congress to rescind these specific items. The requirement that both the House and Senate approve all proposed rescissions means that Congress will continue to control the power of the purse and will have the final word when it comes to spending matters. However, unlike the current rescission authority vested in the President under the Impoundment Control Act of 1974, the bill also includes a mechanism that would virtually guarantee congressional action in an expedited time frame.

Using the Legislative Line-Item Veto, the President and Congress will be able to work together to combat wasteful spending and add transparency and accountability to the budget process. This tool will shed light on the earmarking process and allow Congress to vote up or down on the merits of specific projects added to legislation or to conference reports. Not only will this allow the President and Congress to eliminate wasteful pork-barrel projects, but it will also act as a strong deterrent to the addition of questionable projects in the first place. On the other hand, Members who make legitimate appropriations requests should have no problem defending them in front of their colleagues if they are targeted by the President. With H.R. 4890, we can help protect the American taxpayer from being forced to finance wasteful pork-barrel spending and ensure that taxpayer dollars are only directed toward projects of the highest merit.

The process under H.R. 4890 would begin with the President identifying an item of wasteful spending or a special-interest tax break in legislation that is being signed into law. The President would then submit a special message to Congress, asking for Congress to rescind this wasteful item or items. House and Senate leadership would have the opportunity to introduce the President's rescission requests within two days following receipt of the President's message. After that time period, any Member of Congress would be able to introduce the President's rescission proposal, virtually guaranteeing congressional action. Once the bill is introduced, it

would be referred to the appropriate committee, which would then have five days to report the bill without substantive revision. If the committee fails to act within that time period, the bill would be automatically discharged to the floor. The bill would have to be voted on by the full House and Senate within 10 legislative days of its introduction, with a simple majority required for passage.

Since introducing H.R. 4890, I have received substantial feedback from interested Members of Congress on ways to improve the legislation to ensure that it best meets its intent of controlling federal spending while keeping the power of the purse squarely in the legislative branch. Among the changes that I think may improve the legislation are the following: limiting the time period available to the President to make a rescission request after signing a bill into law; limiting the number of rescission requests that can be made for each piece of legislation signed into law; allowing for the bundling of rescission requests; explicitly prohibiting duplicative requests; ensuring that the authority cannot be used to target policy provisions; and tightening the language that allows the Administration to defer spending while a rescission request is being considered by Congress. These changes will strengthen the bill and better ensure that the legislative branch retains all of the powers delegated to it by our founding fathers. I am committed to continuing to work with my colleagues in Congress throughout the legislative process to make sure that H.R. 4890 is narrowly drafted in order to best achieve its goals.

CONCLUSION

In 2006, the federal government will once again rack up an annual budget deficit of over \$300 billion, and our debt is expected to surpass \$9 trillion. Meanwhile, the retirement of the baby boom generation looms on the horizon, threatening to severely exacerbate this problem. Given these dire circumstances, it is essential that we act now to give the President all of the necessary tools to help us get our fiscal house in order. By providing the President with the scalpel he needs to pinpoint and propose the elimination of wasteful spending, H.R. 4890 takes an important first step toward achieving this goal.

Chairman NUSSLE. Mr. Spratt. I yield to my friend from South Carolina for any comments he would like to make.

Mr. SPRATT. Thank you, Mr. Chairman. Thank you for calling this hearing.

Mr. Chairman, anything that can help bring the budget back to balance is worthy of discussion.

In March of this year, the administration sent up a bill which has been introduced now in the House and the Senate granting the President expedited and, one would say, enhanced rescission authority. This bill would vest the President with the power to propose to Congress the rescission of new discretionary spending and new mandatory spending, and the rescission of targeted tax benefits as well. For its part, Congress would guarantee the administration a vote on a fast track.

This bill is a cession of power from Congress to the President, and as such it behooves us to take care. Jim Wright used to say that you needed to have served under LBJ to fully appreciate what a President with an item veto can do. For example, a President with this power, pushing a big spending bill, could call Members of Congress when a vote was coming up, solicit their support, and if it was not forthcoming, back up his request with a veiled threat of rescission of something that Member dearly wanted.

Charlie Stenholm and I were conscious of this potential for abuse and perverse results 15 years ago when we wrote and brought to the floor what we call expedited and enhanced rescission. We made the President act swiftly, soon after a bill's passage, if he wanted to wield his item veto. In one version we gave Members the right to present a petition of 50 votes so that items could be broken out, considered individually. We gave the President one bite at the apple. If he didn't win the first time, there were no second chances.

We limited the veto to discretionary spending so that we didn't open up Social Security, Medicare to some other Member on the House floor. We widened the scope by including targeted tax benefits, tax benefits that go to a limited number of beneficiaries. And just in case these limitations were not enough to abort abuse, we inserted a 2-year sunset in the bill.

If you respect this whole institution of the public and status as a coequal branch, indeed the first among equals because it is Article I of the Constitution—that is how the Framers viewed us when it was originally written, and 200 years of history have borne them out. If you regard this whole institution as a coequal branch, these limits seem to me to be the least we should be doing to make certain that we do not cede too much power.

This bill before us goes far beyond the balanced bill that Charlie Stenholm and I brought to the floor in 1990. First of all, it effectively resurrects empowerment. It allows the President to suspend spending for 180 days on any item he proposed for rescission, even if Congress promptly rejects the rescission. In effect, this provision allows the President to cancel legislative spending without congressional approval.

This bill omits any time frame for the President to exercise his item veto. As written, it would allow the President to propose rescission months after the passage of a bill and repeatedly thereafter, even in the face of continual rejection by Congress.

Despite this broad grant of authority, the bill contains no sunset. It is permanent law until you can muster two-thirds of the votes in each House to override the likely veto of any bill appealing or reining in the powers this bill would grant.

Supporters will admit that this might be a broad cession of power, but argue that it is necessary with intractable deficits running over \$300 billion for as far as the eye can see.

In truth, most of the earmarks, which are the prime targets of this kind of veto, don't enlarge the total spending pie, they simply divide the pie into smaller pieces. In the end, total spending indeed may not be reduced at all if the President has these powers for reasons that I just mentioned.

The Congressional Budget Office reports that under the more powerful line-item veto which the President enjoyed in 1997 and 1998, only \$600 million was actually cancelled out. As noted earlier, the two being proposed now would very easily give the President the leverage to win passage of legislation that increases rather than decreases the deficit.

If we want budget process changed—and I think we need budget process changed—and improvements for us to get our grip on the deficit, a hand around this enormous problem, then why don't we start with the PAYGO rule, the one rule that really proved its worth during the 1990s, the one rule that Alan Greenspan, sitting where these four witnesses sit, three times testified should be reviewed and reenacted? If we want to increase the scrutiny, if we want to increase the review that earmarks are given or special provisions are given or targeted tax benefits are given, let us realistically have and rigorously enforce the requirements that bills lay over so we have an opportunity, after they come out of conference

or out of committee, to truly scrub them down and find what is in them and address those issues on the floor or elsewhere.

There are lots of budget changes we can make in this institution that would make us more responsible, it would go directly to the problem at hand, without ceding enormous authority to the President, which could be manipulative, which could be used to our detriment.

I would hope that those who support this bill will recognize that some of its features are extremely problematic. For example, as I said, the bill would allow the President to withhold funding that he proposes for rescission for 180 days even if we promptly reject that proposal, and then to withhold funds for an additional 180-day period simply by submitting the same proposal all over again. This could allow the President to thwart previously approved funding unilaterally, and in clear conflict with congressional intent.

To bring the budget back to balance, in all sincerity, we need to return to the kind of process that worked in the 1990s, the PAYGO rule, realistic discretionary spending caps, and budget negotiations, bipartisan negotiations, in which everyone comes to the table, and everything is on the table. Defense spending and nondefense spending, tax cuts, entitlements; everything is on the table, and everybody is at the table.

If passage of this bill causes people to think that we are making headway on the deficit, I fear we will only defer realistic confrontation with the issues we have got to grapple with.

Thank you, and I look forward to your testimony.

Chairman NUSSLE. Thank you, Mr. Spratt.

Let me turn now to our witnesses. All of your statements will be made part of the record, as presented, and we would enjoy having you summarize your testimony as you see fit in the time allotted.

Welcome back to the committee, Pat. Mr. Toomey, it is good to see you, and we are pleased to receive your testimony.

STATEMENT OF THE HON. PATRICK J. TOOMEY, A FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. TOOMEY. Well, it is great to be back.

And, Chairman Nussle, Ranking Member Spratt, members of the committee, thank you very much for giving me the opportunity to testify today on the topic of H.R. 4890, the Legislative Line Item Veto Act of 2006. And I would like to ask permission to have included with my testimony an op-ed that I recently wrote for the Philadelphia Inquirer addressing this very legislation.

Chairman NUSSLE. Without objection.

Mr. TOOMEY. Thank you.

At the Club for Growth, we believe that Federal Government spending has long been excessive both in the total level of expending and in the kinds of spending that have occurred. The Heritage Foundation observes that between 2001 and 2006, Federal spending has grown by 45 percent, and the spending increase is across the board. Spending on education is up 137 percent, spending on Medicare is up 58 percent; defense spending, 76 percent.

In addition to the total level of spending, the kind of pork barrel earmark spending has exploded. Since 1991, Federal earmarks

have grown by 900 percent. And in 2006 alone, earmarks on appropriation bills totaled nearly 10,000 in number, adding up to \$29 billion in costs for taxpayers.

Now, we oppose that spending, and for many reasons, but the main reason, Mr. Chairman, is that we believe excessive government spending over time diminishes the rate of growth of our economy. The Government allocates money through a political process, which is necessarily heavily influenced by the perception of political gain of the officeholders. That is the nature of the process. Alternatively, nongovernment actors, be they individuals or businesses engaged in private enterprise, they tend to allocate capital based on the supply and demand signals they perceive in the marketplace. It is this latter free-market method of capital allocation that tends to allow for maximum economic growth and prosperity; therefore, growth in jobs and wages and opportunity. The former political allocation of capital simply doesn't match up. So because excessive government spending such as we have costs our society jobs, wages and opportunity, we support legislative measures likely to reduce the excesses.

We believe that H.R. 4890 is likely to reduce some of the excesses. We acknowledge this is no panacea; in fact, it is no guarantee that we will have less Federal spending, but we think most likely if this were enacted, there would be fewer earmarks, there would be less total spending, and we think it would be good for taxpayers and good for our economy.

Now, I understand that some opponents have suggested that this legislation may not have constitutional authority granted to Congress to control Federal spending, or that it inappropriately grants to the President lawmaking power. We think that is demonstrably false for several reasons. One, first of all, the Constitution, of course, grants to the President the authority to sign or veto spending bills like other bills, and as such, he has a shared responsibility for establishing both the total level of spending and the specific items of spending.

But furthermore, the 1998 Supreme Court decision regarding the 1996 line-item veto legislation stated the Court's opposition to that legislation very clearly, and I will quote. They say that the act gave the President the unilateral power to change the text of duly enacted statutes, end quote.

This bill under consideration today, or being discussed today, clearly gives the President no such unilateral power. Furthermore, as Justice Scalia observed in his dissent of that 1996 decision, he made the point that insofar as the degree of political lawmaking power conferred upon the executive is concerned, there is not a dime's worth of difference between Congress authorizing the President to cancel a spending item and Congress' authorizing money to be spent on a particular item at the President's discretion. And the latter has been done since the founding of the Nation.

Finally, and, I think, positively, this bill is simply not a true line-item veto; it is much more akin to an enhanced rescission bill. Under H.R. 4890, it is Congress and not the President that would have final say on these spending matters. So in our view this bill clearly would not violate the Constitution. What it would do is it would grant the President the power to force Congress to scrutinize

a little more closely, and in some cases to specifically reaffirm Congress' own spending decisions.

So the question raised by H.R. 4890 seems to be is Congress willing to subject itself to a little more openness and a little more scrutiny of its own spending, and we believe it should.

We observed that the Republican-controlled Congress granted to a Democratic President a considerably greater line-item veto power not long ago. Furthermore, if individual items as specified by the President under this bill have merit, they ought to be able to withstand the scrutiny and simply pass the test of the vote when returned to Congress.

I would like to observe that at least 11 Presidents from both parties have called for this authority. Of the 50 States, 43 grant similar authority to their Governors, and if adopted at the Federal level, it just might help to reduce some of the spending excesses that have accelerated in recent years.

So I thank you for giving me the opportunity to testify on behalf of the 35,000 members of the Club for Growth, and I would like to urge this committee and your colleagues throughout the House to pass H.R. 4890. Thank you.

Mr. RYAN [presiding]. Thank you, Pat.

Next we will hear from Tom Schatz, president of Citizens against Government Waste. Mr. Schatz.

**STATEMENT OF THOMAS A. SCHATZ, PRESIDENT, CITIZENS
AGAINST GOVERNMENT WASTE**

Mr. SCHATZ. Thank you very much, Mr. Chairman, and also Mr. Spratt and the committee, for inviting us here this morning.

This is an issue that has been around for quite some time, as I am sure all of you are aware, and brought up in the Senate many years ago, brought up in the House, of course. We did have passage of one piece of legislation that was found to be unconstitutional. So the question today really is how do we get legislation through that is constitutional, that can be bipartisan, because it will affect future Congresses, future Presidents of both parties? And I think it is important that there be a consensus on how to move this legislation forward because it is not only popular around the country, it needs to be something that sustains future objections from future Congresses.

We have looked at the bill, and, of course, read the testimony of Charles Cooper, who testified before the Senate Budget Committee earlier in May, and he was assistant attorney general under President Reagan, and also argued against the previous version of the line-item veto. His view is this particular version is constitutional, and I think that other than his expertise, there are many others who agree that this is the appropriate way to move forward in this legislative line-item veto or enhanced rescission process.

Looking at the actual numbers, the dollars that could be saved, it depends on how one looks at \$29 billion in pork, as a small number or big number. We released our Congressional Pig Book earlier this year. This is where the \$29 billion that Pat Toomey just spoke of comes from, almost 10,000 items. And while that is about 1 percent of the budget, it is still a list of items that people outside the Beltway recognize as wasteful spending.

This is only part of what needs to be done in terms of budget reform, but certainly it would be nice if the President had the power to eliminate \$500,000 for the Sparta Teapot Museum in North Carolina, a power which he currently doesn't have; or several years ago the \$50 million for the indoor rain forest in Iowa, where the money is still sitting out there, and that project hasn't been built.

There are a lot of ways to look at this and a lot of ways to move it forward, but it addresses what I think the American people say are the excesses here in Washington. Addressing entitlements, addressing larger areas of spending; even defense, of course, does need to move forward as well. But there is a lot of time that is spent on fighting for and protecting earmarks. While it is not a lot of money, it takes up an awful lot of time. A request to the Appropriations Committee, it affects their oversight, it affects the other activities that they may undertake, and therefore, in our view, it is critical to getting at least some of the spending under control in Washington.

And I agree with what Mr. Ryan said about the fact that we are trying to get earmark reform up front. This is looking at the end of the process, allowing the President to be involved. It works in the 43 States. There doesn't seem to be any kind of constitutional crisis in those States with a permanent line-item veto authority.

So, in our view, the point is to get it right the first time. We think it should be permanent; it does work at that level. It did work a little bit when President Clinton had that authority. Whether it is \$600 million or \$30 million, or whatever it might be, it is still something that the American people want to be done. They are looking for reform, they know there has been too much spending. Pat gave you all the statistics, and they are all there. And at this point, with earmark reform moving forward, with other budget reforms being considered, with votes in the Senate to almost eliminate the \$700 million Railroad to Nowhere, the line-item veto is a proposal—or the enhanced rescission in this case—a proposal whose time really has come.

So in our view, we will be mobilizing, through our grass-roots activities or our lobbying group, our members to support this legislation. We hope that it does get to the floor, and we hope that there are additional actions taken by Congress to get spending under control.

I would be happy to answer any questions, and I ask that my full statement be entered into the record.

I also—I don't want to take up the taxpayers' money and print this, but we do have a report called All About Pork, which gives an interesting history about pork. And I just want to mention one quote from President Monroe in 1822, who argued that Federal money ought to be limited to "great national works only, since if it were unlimited, it would be liable to abuse and might be productive of evil." So maybe we can get rid of some of that evil, as President Monroe identified it, and pass this legislation. Thank you.

Mr. RYAN. Thank you, Mr. Schatz.

[The prepared statement of Mr. Schatz follows:]

PREPARED STATEMENT OF THOMAS A. SCHATZ, PRESIDENT, CITIZENS AGAINST
GOVERNMENT WASTE

Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify today. My name is Thomas A. Schatz. I am president of Citizens Against Government Waste (CAGW), a nonprofit organization made up of 1.2 million members and supporters, dedicated to eliminating waste, fraud and abuse in government. Citizens Against Government Waste has not received at any time any federal grant and we do not wish to receive any in the future.

CAGW was created 22 years ago after Peter Grace presented to President Ronald Reagan 2,478 findings and recommendations of the Grace Commission (formally known as the President's Private Sector Survey on Cost Control). These recommendations provided a blueprint for a more efficient, effective and smaller government. The line-item veto was one of those proposals.

Since 1984, the implementation of Grace Commission and other waste-cutting recommendations supported by CAGW has helped save taxpayers more than \$825 billion. CAGW has been working tirelessly to carry out the Grace Commission's mission to eliminate government waste.

H.R. 4890, the Legislative Line Item Veto Act of 2006, was introduced by Rep. Paul Ryan (R-Wisc.), and would grant the power of a line-item veto to the president. This legislation would help restore fiscal discipline in Washington.

The bill provides the authority for the President to identify a specific spending provision or tax break in legislation that is to be signed into law, and to presents a communication to Congress asking for the removal of the item. House and Senate leadership have two days to introduce the rescission request. After three days, any member of Congress is free to introduce the President's proposal.

Next, the rescission bill is submitted to the appropriate committee, which has five days to report the bill without substantive modification. The request is automatically discharged to the floor if the committee fails to act within five days. The full House and Senate must vote on the bill within ten days of its introduction, with a simple majority required to pass. Lastly, if the House and Senate approve of the rescission, it goes to the President and becomes law; if either fails, the proposal is not ratified.

There is a public perception that earmarks, or pork-barrel spending, have been around "since we were a country," as Senate Minority Leader Harry Reid (D-Nev.) said. Nothing could be further from the truth. While Congress is granted the power under Article I, Section 9, Clause 7, which says "No money shall be drawn from the Treasury but by consequence of Appropriations made by Law," the Founding Fathers expressed strong views on the limits of that authority.

Responding to a proposition by James Madison to improve a system of roads used in national mail delivery, Thomas Jefferson wrote the following on March 6, 1796:

Have you considered all the consequences of your proposition respecting post roads? I view it as a source of boundless patronage to the executive, jobbing to members of Congress & their friends, and a bottomless abyss of public money. You will begin by only appropriating the surplus of the post office revenues; but the other revenues will soon be called into their aid, and it will be a scene of eternal scramble among the members, who can get the most money wasted in their State; and they will always get most who are meanest.

President James Monroe argued in 1822 that federal money ought to be limited to "great national works only, since if it were unlimited it would be liable to abuse and might be productive of evil."

President Grover Cleveland was labeled "king of the veto" in the late 1800s for refusing to sign numerous congressional spending bills. He explained this practice by stating, "I can find no warrant for such an appropriation in the Constitution."

While the term pork-barrel spending was first used in the late 1800s comparing the rush toward tax dollars to the way slaves would crowd around barrels of salted pork at meal time, the practice was not widespread until the late 1980s. In particular, pork-barrel spending has exploded since the mid-1990s. Since 1991, CAGW's annual Pig Book has identified 76,420 examples of egregious pork-barrel spending, which has cost taxpayers \$241 billion. Examples from the 2006 Congressional Pig Book include:

- \$13.5 million for the International Fund for Ireland, which helped finance the World Toilet Summit;
- \$8.3 million for the Department of Defense for breath alcohol testing equipment;
- \$6.4 million for wood utilization research;
- \$5 million for the Capitol Visitor Center;
- \$4.2 million for shrimp aquaculture research;

- \$2.3 million for the International Fertilizer Development Center in Alabama;
- \$2.2 million for the MountainMade Foundation;
- \$1 million for the Waterfree Urinal Conservation Initiative;
- \$550,000 for the Museum of Glass in Tacoma, Washington;
- \$500,000 for the Sparta Teapot Museum in Sparta, North Carolina.;
- \$450,000 for plantings on the eastern front of the Capitol;
- \$250,000 for the National Cattle Congress in Waterloo, Iowa;
- \$234,000 for the National Wild Turkey Federation in Edgefield, South Carolina;
- \$150,000 for the Bulgarian-Macedonian National Education and Cultural Center in Pittsburgh, Pennsylvania;
- \$150,000 for the Actors Theater in Louisville, Kentucky; and
- \$100,000 for the Richard Steele Boxing Club in Henderson, Nevada.

For a brief period, the American people had hope that reform would reduce the assault on their wallets. In 1995, Congress passed the line-item veto by a voice vote in the House and a 69–31 vote in the Senate. This law was enacted after several previous failed efforts to pass such legislation.

Unfortunately, this new veto privilege was used sparingly by President Bill Clinton to cancel a mere \$355 million in fiscal year 1998 pork-barrel spending, less than .002 percent of that year's budget. Although the amount of waste that was removed was miniscule, members of Congress who had previously lauded the passage of the line-item veto began to question its legitimacy. This was clear evidence that even though the overall amount of money saved was relatively small, eliminating more waste would have had a substantial effect on the spending culture.

However, the Supreme Court took the line-item veto power away from the president in mid-1998, ruling the law unconstitutional.

The need still exists for a constitutional presidential line-item veto because Congress has confronted the president repeatedly with hastily-crafted, 11th-hour omnibus

bills that cover all or substantial portions of federal spending for the year. This practice inhibits the exercise of the veto, which under such circumstances would have the effect of closing down the federal government. A line-item veto would enhance the president's role in the budget process. It would not tilt the power over the nation's purse strings in favor of the president, but restore the balance that has been eroded by Congress' budget rules that favor spending and pork. As it does in 43 states, it would make both the legislative and executive branches more accountable for our tax dollars. While some have questioned whether a line-item veto at the federal level would threaten the separation of powers, experience with such authority at the state level indicates that would not be the outcome.

A line-item veto is necessary because under current law, the president's rescission proposals can easily be ignored. This luxury afforded Congress by the Budget and Impoundment Control Act of 1974 shifted the balance of power over spending, and that balance needs to be restored. It is an affront to common sense that while the president now can propose to rescind any portion of an appropriations bill, Congress is not required to vote on his rescission package. If Congress chooses to ignore the president's request, it expires after 45 days. The spending proposals stand as law.

Under H.R. 4890, the President would be authorized to defer or suspend signing an appropriations bill for up to 180 days, enough time to allow Congress to consider the President's rescission suggestions and to vote them up or down. By giving the president a bigger presence in spending decisions, fiscally sound legislation and not special interests would be the order of the day.

Concern that the line-item veto would give the president unlimited power is unfounded. The fear that the president could use the veto authority to expand his power exponentially and upset the checks and balances between the branches is addressed by restricting the president's veto power to disapproving specific line-items in appropriations bills. In this way, the line-item veto would not give authority to the president to alter the budget priorities set by Congress in its spending decisions, since the veto can only be used to withhold funds for an item.

As for the constitutionality of H.R. 4890, it is the opinion of former Assistant Attorney General Charles J. Cooper, that the proposal by the president passes that test. Mr. Cooper testified before the Senate Budget Committee on May 2, 2006, that the Legislative Line Item Veto Act of 2006 has been designed in a way that avoids what was previously deemed unconstitutional by the Supreme Court—specifically that a president cannot reject outright portions of a bill. If he disagrees with it, he must “reject it in toto.” Consequently, it was stated in the court's opinion that President Clinton's cancellation “prevent[ed] one section of the Balanced Budget Act of 1997 * * * from having legal force or effect,” while allowing the remaining portions of the Act “to have the same force and effect as they had when signed into law.”

Mr. Cooper's testimony is especially significant because in 1997, he was on the opposite side of the line-item veto issue, when he represented the City of New York and healthcare associations and providers who were affected by President Clinton's use of the line-item veto on the Balanced Budget Act of 1997. That veto resulted in a reduction of almost \$1 billion in Medicaid subsidies for the State of New York. In *Clinton v. City of New York*, 524 U.S. 417, 448 (1998) the Supreme Court struck down the Line Item Veto Act, stating "the Act's cancellation provisions violate Article I, & 7, of the Constitution."

As Mr. Cooper stated in his Senate testimony:

The Legislative Line Item Veto Act of 2006, in contrast, is framed in careful obedience to Article I, Section 7 and to the Supreme Court's teaching in *Clinton*. The President is not authorized by the bill to 'cancel' any spending or tax provision, or otherwise to prevent such a provision 'from having legal force or effect.' To the contrary, the purpose of S. 2381, as President Bush put it in proposing the legislation, is simply to 'provide a fast-track procedure to require the Congress to vote up-or-down on rescissions proposed by the President.' Thus, any spending or tax provision duly enacted into law remains in full force and effect under the bill unless and until it is repealed in accordance with the Article I, Section 7 process—bicameral passage and presentment to the President.

For decades, the opportunities for purging wasteful government programs and reducing the size of government have been scarce. A line-item veto can provide opportunities for Congress and the president to work closely for a smaller, more efficient and less costly government.

The Government Accountability Office, Congress' own investigative agency, estimated in 1992 that a presidential line-item veto could have cut \$70.7 billion in pork-barrel spending from fiscal years 1984 through 1989. That's \$70.7 billion in unnecessary spending taken out of the hands of the private sector.

The line-item veto would help restore control over the budget process. This, in turn, would promote fiscal soundness, efficient government, and policies favorable to continued economic growth. A line-item veto, over time, would reduce the inclusion of unauthorized, non-competitive projects in appropriations bills and require increased cooperation between Congress and the executive branch in determining which programs truly need to be funded with the taxpayers' money.

CAGW realizes that while pork-barrel spending is a serious problem, it affects a relatively small portion of the budget, and more needs to be done to limit the growth of entitlements and other government expenditures in order to bring the budget back into balance. However, that does not mean that a line-item veto, which receives a great deal of attention because it is tied to some of the most egregious examples of wasteful spending, should be delayed until other budget problems are addressed or solved.

Mr. Chairman, the line-item veto would allow the president to weigh parochial expenditures which benefit the few against the common good and the priorities of the many. The American people know the way business is done in Washington, and they are seeking changes. A recent Wall Street Journal/NBC News poll reported that "among all Americans, a 39 percent plurality say the single most important thing for Congress to accomplish this year is curtailing budgetary 'earmarks' benefiting only certain constituents."

Successive presidents have asked Congress to provide them with the line-item veto. Congress must show that it is serious about controlling spending by passing legislation giving the president the line-item veto. The time is now to pass a constitutional version of that legislation.

This concludes my testimony. I will be glad to answer any questions.

Mr. RYAN. Next we are going to hear from Ed Lorenzen, the policy director of the Concord Coalition. Mr. Lorenzen.

STATEMENT OF EDWARD LORENZEN, POLICY DIRECTOR, CONCORD COALITION

Mr. LORENZEN. Good morning, Mr. Chairman, Mr. Spratt and members of the committee; it is good to be before you.

I am Ed Lorenzen, the national policy director of the Concord Coalition. Before going to work at the Concord Coalition, I spent nearly 15 years working on Capitol Hill, primarily as an aide to former Congressman Charlie Stenholm. In that capacity I had the privi-

lege of working with several members of the committee as well as the Democratic and Republican staff of the committee.

The Concord Coalition has worked for 14 years to help build a political climate that encourages elected officials to make the tough choices required to balance the Federal budget, keep it balanced on a sustainable basis, and prepare for the fiscal and economic challenges that will occur as the Nation's population become sharply older in the coming decades.

Most recently, the Concord Coalition has organized the Fiscal Wake-Up Tour, a series of public forums around the country designed to focus attention on our Nation's fiscal challenges. We are taking this message across the country because better public awareness of the problem is the first step in finding solutions that are both acceptable and meaningful.

The Concord Coalition believes that the proposed modified line-item veto could have a positive impact on the budget process. Strengthening the rescission process, as this proposal would do, brings greater accountability to the budget process.

Now, let me say the enactment of the modified line-item veto authority will take a step toward reducing public cynicism about the public political process and send a signal to the public that politicians are serious about addressing the deficit, and we are willing to set aside narrow parochial interests to make hard choices for the common good.

Restoring public confidence in the budget process is an important first step in dealing with the deficit. One of the things that we found throughout the Fiscal Wake-Up Tour is that even after explaining to the public the tough challenges we are facing with entitlements and tax policy, that they are willing to make those tough choices, but they first want to be reassured that those sacrifices will go toward the greater goal of deficit reduction and will not be diverted toward special-interest spending or taxes.

Under realistic estimates, deficits will remain near or above \$300 billion the rest of the decade. Fiscal policy is not sustainable over the long term.

Now, proposals to grant the President modified line-item veto authority are not likely to have a significant impact on budgetary outcomes. The spending and tax items that will be affected by this provision represent a relatively small portion of the budget. Simply cracking down on everyone's favorite target of waste, fraud and abuse is simply not enough to get the job done.

Modified line-item veto authority would do nothing to address the underlying structural deficit problems resulting from existing tax and entitlement laws, and the legislative actions which have the greatest impact on a deficit are expansions of entitlement programs or tax cuts that go well beyond the scope of this legislation. That is one of the reasons that the Concord Coalition strongly supports reinstatement of PAYGO budget enforcement rules for all tax and spending legislation that would increase the deficit, as well as mechanisms which would force Congress to address existing structural fiscal problems.

The modified line-item veto proposal put forward by President Bush embodies the approach of legislation passed by the House of Representatives in the early 1990s, as Congressman Ryan men-

tioned. This approach, an expedited rescission, has received support from Members of both sides of the aisle over the years.

Having been involved in several previous legislative efforts to enact expedited rescission authority, I thought it might be useful to briefly discuss some of the differences between this proposal and previous proposals, as well as other issues that the committee may wish to consider. I will focus on six key areas: the ability to withhold funds, when and how often the President may propose rescissions, allowing separate votes on individual items, sunseting the authority, applying the authority to targeted tax revisions, and ensuring that savings goes to deficit reduction.

On withholding funds, that is perhaps the most significant difference between H.R. 4890 and previous expedited rescission proposals. As Congressman Spratt and others have noticed, that language will allow the President to withhold funds even if Congress has already voted to reject a proposed rescission, which could be viewed as an unconstitutional grant of Presidential authority to cancel provisions of law.

Previous expedited rescission proposals included language making it clear that the President could not withhold funds or delay implementation of a tax provision after Congress has rejected the proposal. I would strongly encourage the committee to replace this provision allowing the President to withhold funds for 180 days with language requiring that the funds be made available for obligation on the day after rescission package is adopted.

There was some question in the past whether the President would be allowed to withhold funds if Congress ignored or waived the requirements of this legislation and failed to act on a proposed rescission package. Based on conversations I have had with legal scholars in the past, I believe the President would have the authority to defer spending until Congress acts in rescission; however, the committee may wish to clarify this point in legislative language.

On the issue of the timing and composition of the rescission message, most of the previous expedited rescission proposals allow the President to submit one rescission package per bill for expedited consideration. This limitation was included to prevent the President from tying up the legislative schedule with dozens of rescission proposals. By contrast, H.R. 4890 gives the President the authority to submit rescissions throughout the year with no limit on the number of rescissions he can submit.

On the issue of separate votes on individual items, as Congressman Spratt mentioned, several previous versions contain a mechanism for obtaining a vote to strike an individual action or item in a package. If the President proposed to rescind an item with strong congressional support in the package with dozens of other lower-priority items, Congress would have the option of striking the politically popular provision from the package and approving the rest of the package.

On the sunset authority, as Congressman Spratt mentioned, concerns have been raised that the President could abuse this authority granted in the legislation. Some previous versions address this concern by including provisions sunseting authority after 2 years. If a President were to abuse the authority, Congress almost certainly would not approve an extension.

H.R. 4890 would allow the President to propose rescissions of targeted tax benefits as well. The Concord Coalition believes budget enforcement rules should apply equally to taxes and spending. Special-interest provisions in tax bills have as much, if not more, of an impact on the Federal budget of earmarks and appropriation bills. And I would note that the concept of allowing the President to single out targeted tax rates and tax bills as well as spending earmarks was originally introduced into the debate by then-House Republican Leader Bob Michel.

The Concord Coalition strongly supports the requirement that all savings through modified line-item veto would go to deficit reduction. This requirement ensures that the authority would be used to improve the overall fiscal condition instead of simply reducing the priorities of Congress in order to fund the President's priorities. I would encourage the committee to strengthen this language to clarify that any savings from rescinding tax or entitlement provisions would not be credited to the PAYGO scorecard for purposes of congressional rules or statutory budget enforcement rules.

In conclusion, the proposed modified line-item veto and similar proposals would not remotely begin to address the magnitude of our fiscal problems. However, granting the President modified line-item veto authority could be a useful tool to improving the accountability of the budget process and achieving greater public confidence in the budget process that will be necessary to make the tough choices on much larger fiscal issues.

Mr. RYAN. Thank you, Ed; and it is nice to see you again.
[The prepared statement of Mr. Lorenzen follows:]

PREPARED STATEMENT OF EDWARD LORENZEN, POLICY DIRECTOR, THE CONCORD COALITION

BACKGROUND

Chairman Nussle, Congressman Spratt, and members of the Committee, thank you for inviting me to discuss the President's modified line-item veto proposal. I am the National Policy Director for The Concord Coalition, a nonpartisan organization with approximately 200,000 members who hail from every state who have consistently urged Washington policymakers to strengthen the nation's long-term economic prospects through sound and sustainable fiscal policy. The Concord Coalition receives no grants, contracts, or other funding from the government. Before going to work at Concord, I spent nearly fifteen years working on Capitol Hill, primarily as an aide to former Congressman Charlie Stenholm. In that capacity I had the privilege of working with several members of the Committee as well as both the Democratic and Republican staff of the committee.

Concord's co-chairs are former senators, Warren B. Rudman (R-NH) and Bob Kerrey (D-NE). The Concord Coalition has worked for fourteen years since the organization's founding by Paul Tsongas, Warren Rudman, and Peter G. Peterson in 1992 to help build a political climate that encourages elected officials to make the tough choices required to:

- Balance the federal budget
- Keep it balanced on a sustainable basis, and
- Prepare for the fiscal and economic challenges that will occur as the nation's population becomes sharply older in coming decades.

Given these objectives, The Concord Coalition is encouraged by encouraged by the growth in the awareness of our fiscal challenges on the part of the public and policymakers. The Concord Coalition has organized The Fiscal Wake Up Tour, a series of public forums around the country designed to focus attention on our nation's daunting long-term fiscal challenges. The purpose of this new issue-oriented grassroots project is to draw attention to the simple fact that, according to analysts of diverse political views, current fiscal policy is unsustainable and hard choices must be made to set things right. To that end, we have joined forces with speakers from the Brookings Institution, the Heritage Foundation, the Committee for Economic

Development the Committee for a Responsible Federal Budget and other organizations who may differ on proposed solutions but who all agree on the magnitude of the problem and the need for serious action. Our purpose is not to cast blame but to give the public a better idea of how serious the long-term fiscal problem is; why there is no free lunch, and what the realistic trade-offs are.

We are taking this message across the country because better public awareness of the problem is the first step in finding solutions that are both acceptable and meaningful. Without greater understanding of the problem among the public, community leaders, business leaders and home state media, elected leaders are unlikely to break out of their comfortable partisan talking points. In our Wake Up Tour events we explain the greater context for today's fiscal policy debates, including: changing demographics; inadequate national savings; intractable health care costs; the crowding out of discretionary spending on everything from defense to education; and ultimately growing deficits and debt that is simply unsustainable.

Under realistic estimates, deficits will remain near or above \$300 billion for the rest of the decade. Analysts of diverse ideological perspectives and nonpartisan officials at the Congressional Budget Office (CBO) and the Government Accountability Office (GAO) have all warned that current fiscal policy is unsustainable over the long-term.

Dealing with these fiscal challenges will require a comprehensive look at all parts of the budget. As the Concord Coalition board said in a recent New York Times Ad:

"If everyone insists on only cutting someone else's priorities, talk about deficit reduction will remain just that. The best way to end this standoff is to agree on the common goal of deficit reduction, put everything on the table-including entitlement cuts and tax increases-and negotiate the necessary trade-offs * * * Unfortunately, actions have been wanting. Leaders must put the national interests ahead of partisan or parochial interests and develop a specific and realistic plan to put the country on a sustainable long-term fiscal path."

THE ROLE OF THE LINE ITEM VETO IN ADDRESSING FISCAL PROBLEMS

One of the cornerstones of the administration's effort to restore fiscal discipline is the proposal for a line-item veto "that would withstand constitutional challenge." The proposal would give the President the authority to defer new spending whenever he "determines the spending is not an essential Government priority."

The Concord Coalition believes that the proposed modified line-item veto could have a positive impact on the budget process. Strengthening the rescission process as this proposal does would bring greater accountability to the budget process so that individual appropriations and tax items may be considered on their individual merits. The current rescission process does not make the President or Congress accountable. Congress can ignore the President's rescissions, and the President can blame Congress for ignoring his rescissions.

This reform will not make a significant dent in our deficit. But it will have a very real cleansing effect on the legislative process and will take a step toward reducing the public cynicism about the political process. Granting the President modified line-item veto authority would send a signal to the public that politicians in Washington are willing to set aside narrow parochial interests and make hard choices for the common good.

Restoring public confidence in the budget process is an important step in gaining the support that will be necessary to make the difficult choices required to address our fiscal challenges. On the Fiscal Wake Up Tour we have found that even after we present information regarding the magnitude of our fiscal challenges and point out that pork barrel spending pales in comparison to the rapid growth in entitlement spending, audience members still feel strongly about the need to cut out wasteful spending. It is not that they believe that the budget can be balanced by eliminating waste, fraud and abuse. The audiences at Wake Up Tour events understand that addressing our fiscal problems will require tough choices restraining entitlement spending or increase revenues and are willing to accept the necessary sacrifices. But before they accept sacrifices in terms of lower entitlement benefits, reduced services or higher taxes they want to be assured that those savings will go toward the greater good of balancing the budget and not diverted to special interest spending or tax items.

Although Concord supports granting the President additional authority to root out low-priority spending, we do not believe this proposal by itself will have a significant impact on budgetary outcomes. The spending and tax items that would be affected by these provisions represents a relatively small piece of the budget. Moreover, President Bush has never used his authority under current law to submit rescissions of earmarks or other spending he considers low priority, so it is unclear

whether granting him this additional authority would have much of an impact at all.

According to the House Appropriations Committee, appropriations earmarks totaled \$17 billion last year. Other studies have produced somewhat higher numbers, perhaps as high as \$30 billion. The cost of earmarks in authorizing measures such as the highway bill and special interest tax provisions in tax legislation undoubtedly add to this cost. But even under the most optimistic of estimates the potential savings from reducing or even eliminating so-called “pork barrel spending” would not remotely begin to address the magnitude of our fiscal problems.

In 2005, the government spent \$2.47 trillion and ran a deficit of \$318 billion. If Congress had been required to balance the budget without raising taxes, it would have had to enact a 14 percent cut in all federal programs ? not an easy task. But if Social Security, Medicare and Medicaid were exempted, the cut would have to be 25 percent. Nobody would suggest such a thing, but these numbers demonstrate that exempting popular programs from fiscal scrutiny is not a viable strategy for balancing the budget and that simply cracking down on everyone’s favorite target of “waste, fraud and abuse,” is not enough to get the job done.

Modified line-item veto authority would do nothing to address the underlying structural deficit problems resulting from existing tax and entitlement laws. Moreover, the legislative actions which have the greatest impact on the deficit are expansions of entitlement programs or tax cuts that go well beyond the special interest provisions that this legislation would address. The Concord Coalition strongly supports reinstatement of budget enforcement rules for all tax and spending legislation that would increase the deficit as well as mechanisms which would force Congress to address existing structural fiscal problems.

BRIEF HISTORY OF MODIFIED LINE ITEM VETO PROPOSALS

Under Title X of the Budget Control and Impoundment Act , the President may propose to rescind all or part of any item at any time during the fiscal year. If Congress does not take action on the proposed rescission within 45 days of continuous session, the funds must be released for obligation. Congress routinely ignores Presidential rescissions. The discharge procedure for forcing a floor vote on Presidential rescissions is cumbersome and has never been used. Most Presidential rescission messages have died without a floor vote.

The modified line-item veto proposal proposed by President Bush embodies the approach of legislation passed by the House of Representatives in 1993 and 1994 requiring Congress to vote up or down by majority vote on rescissions submitted by the President. This approach, known as “expedited rescission authority” or “modified line-item veto,” has received support from members on both sides of the aisle over the years. In the early 1990’s, then Congressman Tom Carper worked with former Congressmen Dick Armey, Tim Johnson and others to find a bipartisan agreement on consensus legislation establishing expedited rescission authority. The House of Representatives overwhelmingly approved this consensus language in October of 1992.

The legislation was introduced in the 103rd Congress by former Congressman Charlie Stenholm, for whom I had the honor of working from 1990 through 2004. The House of Representatives passed a version of this legislation in April of 2003 with several modifications and improvements made in cooperation with Congressman Spratt based on consultations with leaders of the Appropriations Committee, the Clinton administration and other Members. The House again passed an expedited rescission proposal authored by Congressman Stenholm and former Congressmen Tim Penny and John Kasich in July of 1994.

Enactment of the Line Item Veto in 1996 made expedited rescission a moot issue in Congress. Congress rejected proposals to provide expedited rescission authority as a fallback option if full line-item veto authority was struck down. There was little interest in the issue immediately following the Supreme Court decision striking down the Line Item Veto law, perhaps because the budget was in surplus. However, the proposal resurfaced last year when Congressman Paul Ryan offered an amendment granting the President expedited rescission authority. This approach has now been embraced by President Bush.

Having been involved with most of these previous legislative efforts to enact expedited rescission authority similar to the President’s proposal, I thought it might be useful to discuss some of the differences between these previous proposals and the legislation currently before the committee as well as other issues the Committee may want to consider in marking-up the legislation.

Previous expedited rescission bills were carefully crafted to comply with the Constitutional requirements established by the courts in *I.N.S. v. Chada*, 462, U.S. 919

(1983), the case that declared legislative veto provisions unconstitutional. Legislative vetoes allow one or both Houses of Congress (or a Congressional committee) to stop executive actions by passing a resolution that is not presented to the President. The Chada case held that legislative vetoes are unconstitutional because they allow Congress to exercise legislative power without complying with Constitutional requirements for bicameral passage of legislation and presentment of legislation to the President for signature or veto. Unlike the line-item veto law struck down by the Supreme Court, the expedited rescission approach meets the Chada tests of bicameralism and presentment by requiring that both chambers of Congress pass a motion enacting the rescission and send it to the President for signature or veto, before the funds are rescinded. Expedited rescission does not provide for legislative review of a preceding executive action, but expedited consideration of an executive proposal. Thus, it represents a so-called ‘report and wait’ provision that the Court approved in *Sibbach v. Wilson and Co.*, 312 U.S. 1 (1941) and reaffirmed in *Chada*.

THE ABILITY TO WITHHOLD FUNDS FOR PROPOSED RESCISSIONS

The most significant difference between H.R. 4890 and previous expedited rescission proposals is the provision in H.R. 4890 allowing the President to withhold funds for items in a rescission package for 180 days. The language appears to allow the President to withhold funds even if Congress has already voted to reject the proposed rescission. This could be viewed as an effective grant of presidential authority to cancel provisions of law that was proscribed by the Supreme Court in *Clinton v. City of New York*, 524 U.S. 417 (1998), the decision striking down the Line Item Veto Act.

Previous expedited rescission proposals included language making it clear that the President could not withhold funds or delay implementation of a tax provision after Congress has rejected the proposal. I would strongly encourage the Committee to replace the provision in H.R. 4890 allowing the President to withhold funds for 180 days with the following language that was included in all previous expedited rescission proposals:

REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION

1. Any amount of budget authority proposed to be rescinded in a special message transmitted to Congress under subsection (b) shall be made available for obligation on the day after the date on which either House rejects the bill transmitted with that special message.

2. Any targeted tax benefit proposed to be repealed under this section as set forth in a special message transmitted by the President shall not be deemed repealed unless the bill transmitted with that special message is enacted into law.

There was some question in the past about whether the President would be allowed to withhold funds if Congress ignored or waived the requirements of the legislation and failed to act on a proposed rescission package. Based on conversations I had at the time with legal experts I believe that the language above gives the President implicit authority to defer spending until Congress acts on the rescission and that OMB would be allowed to utilize the practice it has followed under Title X of the Impoundment Control Act of withholding funds from apportionment until Congress acts on the rescission message. However, if the Committee decides to adopt the language mentioned above, you may want to clarify that point in the legislative language or committee report.

LIMITATIONS ON WHEN AND HOW OFTEN THE PRESIDENT MAY PROPOSE RESCISSIONS

Most of the previous expedited rescission proposals granted the President the authority to submit one rescission package per bill for expedited consideration within ten days after enactment. All of the proposed rescissions for each bill would be bundled into one package for Congressional consideration. This limitation was included to prevent the President from tying up the legislative schedule with dozens of rescission proposals that would receive priority consideration. The President would be free to submit additional rescissions throughout the year as under current law, but they would not be eligible for expedited consideration. By contrast, H.R. 4890 gives the President the ability to submit rescissions throughout the year with no limits on the number of rescission proposals he can submit. This gives the President greater flexibility to rescind items that are discovered or found to be of low priority well after a bill has been signed into law, but also presents opportunity for abuse.

SEPARATE VOTES ON INDIVIDUAL RESCISSION ITEMS

The requirement that all rescissions in each bill be bundled together led to concerns that individual items would not get an up or down vote on its merits but could be eliminated because it was packaged with other less meritorious items. This led to the inclusion of a process to divide up a package of rescissions. The Stenholm-Spratt legislation passed by the House in 1993 allowed 10 Senators or 45 Members of the House of Representatives to demand a separate vote to strike an item from the package. That way if the President proposed to rescind an item with strong Congressional support in a package with a dozen other lower priority items, Congress would have the option of striking the popular provision from the package and approving the rest of the package instead of being forced to choose between rejecting the entire package or approving the rescission of an item with strong support.

H.R. 4890 does not include language providing the ability to get a separate vote on individual items in the package. This is obviously much less of an issue without the requirement that all rescissions for each bill be bundled together. However, even under H.R. 4890 the President potentially could try to thwart the will of Congress by packaging a rescission that does not have Congressional support with other rescissions that are difficult to reject.

SUNSET

Concerns have been raised that the President could abuse the authority granted under this legislation. Specifically, it has been suggested that a President could use this authority not to reduce the deficit but to punish his opponents and increase his leverage with Members of Congress. In fact, some have argued that granting the President this authority could just as easily increase spending if the President threatens to veto items unless programs he favors are increased. I believe that these dangers are mitigated by the fact that the President must get a majority of the House and Senate to support his rescissions for them to take effect. Moreover, a President who blatantly abused the authority for political purposes would risk political repercussions with the public as well as Congress.

Nonetheless, these are very serious and legitimate concerns and it is impossible to determine whether or not these fears are founded until the President has the authority. Some previous expedited rescission proposals have addressed the concern by including a provision sunseting the authority after two years. Advocates of this approach referred to it as a "two year test drive" to see how it operates. If a President abused the authority, Congress almost certainly would not approve an extension. This is similar to the approach that Congress took when it granted the executive branch additional authority in the Patriot Act.

APPLYING RESCISSION AUTHORITY TO TARGETED TAX PROVISIONS

H.R. 4890 would allow the President to propose rescission of targeted tax benefits for expedited consideration in Congress. As a general principle, The Concord Coalition believes that budget enforcement rules should apply equally to taxes and spending. Since spending and tax decisions both have consequences for the budget, there is no good reason to exempt either from budget discipline. It is therefore very appropriate to extend expedited rescission authority to special interest tax breaks. Special interest provisions in tax bills have as much if not more of an impact on the federal budget than earmarks in appropriations bills. The vast number of special interest fiscal giveaways in the corporate tax bill passed in 2004 and the tax incentives in the energy bill approved last year are just the latest examples of tax bills becoming the vehicle for Congressional pork-barreling at its worst.

Applying this authority to tax legislation has encountered resistance among some Republicans in the past. However, it is worth noting that the concept of allowing the President to single out targeted tax breaks in the same way as spending earmarks was originally introduced into the debate by then House Republican leader Bob Michel. Exempting tax cuts from modified line-item veto authority would also encourage an expansion of so-called 'tax entitlements' where benefits are funneled through the tax code rather than by direct spending, a far less efficient approach.

ENSURING THE SAVINGS GO TO DEFICIT REDUCTION

The President proposed that the modified line-item veto be linked to deficit reduction and that any savings achieved would not be available to offset increases in other programs. The Concord Coalition strongly supports the requirement that all savings from modified line item would go to deficit reduction. This requirement ensures that the authority will be used to improve the overall fiscal condition instead

of simply reducing the priorities of Congress in order to fund the President's priorities.

H.R. 4890 seeks to implement this mandate by providing for an adjustment of spending allocations to reflect enacted rescissions and requiring the Director of the Office of Management and Budget Committees to adjust any statutory spending limits. Without these provisions the enactment of a rescission package would simply free up additional room within budget allocations and spending limits for other spending.

This language is very useful as far as it goes. However, I would encourage the Committee to take it a step further and clarify that any savings from rescinding a tax or entitlement provision would not be credited to the paygo scorecard for purposes of Congressional rules or statutory budget enforcement rules. The principal that the purpose of the modified line-item veto should be to improve the budget's bottom line and not rearrange budgetary priorities should apply to tax and entitlement legislation as well.

Although statutory pay-as-you-go rules expired in 2002, the Senate still has a "post-policy" paygo rule for tax and entitlement legislation which increases the deficit beyond the amount provided in the budget resolution. Approval of a Presidential proposal to rescind a tax benefit should result in a corresponding reduction in the amount available on the Senate paygo scorecard for tax cuts. More importantly, as I stated earlier The Concord Coalition continues to urge Congress to reinstate paygo rules for all tax and entitlement legislation which would reduce the deficit. We would therefore encourage the Committee to adopt language ensuring that any savings from rescinding a tax or entitlement spending provision would truly go to deficit reduction and could not be used to offset other tax cuts or entitlement spending increases.

CONCLUSION

The proposed modified line-item veto and similar proposals would not remotely begin to address the magnitude of our fiscal challenges. Budget enforcement tools such as pay-as-you-go rules for all tax and spending legislation which would increase the deficit would have a much greater impact on fiscal policy. Balancing the budget and establishing a fiscally sustainable course for the future will require Congress and the President to confront tough choices regarding tax and entitlement policy. However, granting the President modified line-item veto authority could be a useful tool in improving the accountability of the budget process and achieving greater public confidence in the budget process that will be necessary to make the tough choices on much larger fiscal issues.

Mr. RYAN. Next we will hear from James Horney, from the Center on Budget and Policy Priorities. Mr. Horney.

STATEMENT OF JAMES R. HORNEY, SENIOR FELLOW, CENTER ON BUDGET AND POLICY PRIORITIES

Mr. HORNEY. Thank you, Mr. Chairman. Congressman Spratt, members of the committee. I appreciate the opportunity to appear here today to talk about the line-item veto proposal. I am Jim Horney. I am a senior fellow at the Center on Budget and Policy Priorities, a nonpartisan, nonprofit research and policy institute which receives no government funds.

Before going to the center, though, I did work for 20 years for the legislative branch; I worked for the House Budget Committee, the House Rules Committee, the Senate Budget Committee, the Government Accountability Office and the Congressional Budget Office. While Ed was staying put working for Mr. Stenholm, I was moving around.

I would also, with the approval of the committee, like to submit for the record a paper authored by my colleague at the Center on Budget, Richard Kogan—

Mr. RYAN. Without objection.

Mr. HORNEY [continuing]. Which goes into more detail about the things I want to talk about today.

[The information referred to follows:]

PROPOSED LINE-ITEM VETO LEGISLATION
WOULD INVITE ABUSE BY EXECUTIVE BRANCH

PRESIDENT COULD CONTINUE WITHHOLDING FUNDS
AFTER CONGRESS VOTED TO RELEASE THEM

By Richard Kogan

The Administration has proposed the Legislative Line Item Veto Act of 2006, which was recently introduced in Congress by Senate Majority Leader Bill Frist (R-Tenn.) as S. 2381 and by Representative Paul Ryan (R-Wis.) as H.R. 4890.¹ Both the House and the Senate are expected to consider the proposal in coming months.

The proposal would allow the President to sign appropriations acts and tax and entitlement legislation, and then strike specific provisions from them. He would be allowed to strike far more than “earmarks.” For example, the President could, if he chose, leave all earmarks in place while eliminating all funding for the 91 programs he proposed to eliminate in his February 2006 budget.

Under the proposal, when the President chose to strike amounts from appropriations acts, he could withhold the funds in question for 180 days. During that time, Congress would be required to vote on whether to pass legislation eliminating the funding as the President had requested, without any amendments being allowed. If Congress turned down the President’s request to eliminate the funds the President could continue to withhold them for months after Congress had voted to reject his request to eliminate the funding. Some of the funds could expire in the meantime if the 180-day period extended beyond the end of the fiscal year for which the funds had been appropriated.

As acting Congressional Budget Office director Donald Marron explained in recent testimony on the proposal, the withholding of funds “would not end upon the Congress’s rejection of the rescission proposals * * *,” giving the President the “power to unilaterally defer spending for 6 months, thereby effectively canceling some budget authority and some programs altogether (for which the funding would lapse at the end of the fiscal year * * *)”²

The President also could use the new “line-item veto” procedure to strike provisions of new entitlement legislation and certain new “targeted tax benefits” contained in recently enacted tax bills. This authority would be far broader with respect to entitlement expansions than with respect to tax cuts. In fact, it appears Congressional tax-writers could draft new tax breaks in a way that made them exempt from the new procedure.

HOW WOULD THE NEW PROPOSAL DIFFER FROM THE PRESIDENT’S EXISTING AUTHORITY
TO PROPOSE RESCISSIONS?

The new proposal would significantly expand the President’s authority. Currently, the President can request that Congress rescind (or cancel) enacted appropriations, and he can temporarily withhold the money in question while Congress considers the rescission request. The new procedure the Administration is proposing would be in addition to these existing procedures. (If the President wished Congress to rescind funding, he would be free to submit his rescission proposals to Congress under either set of procedures.)

The new procedure would differ from the existing rescission procedure in a number of important ways:

- The new procedure would give the President a “fast track” to force an up-or-down congressional vote on his package of terminations in its entirety. The package of cancellations could not be divided into separate parts, amended, or filibustered. The vote would occur within 10 days of the package’s introduction in Congress as a piece of legislation, and within 13 days of the President’s submitting the package. (The package would have to be introduced in Congress within 3 days after the President submitted it.)

- The President could package his proposed cancellations in any way he wanted. He could split his proposed cancellations of items from a single piece of legislation into a number of packages, sending Congress a separate “package” for each proposed cancellation and compelling Congress to take dozens of individual votes. Or, he could combine cancellations from different bills—both appropriations bills and bills affecting mandatory programs—into a single package. Congress would have to cast an up-or-down vote on each package exactly as the President had constructed it. In sharp contrast, the existing rescission procedure allows Congress to package the President’s rescission requests in ways that are most convenient for congressional consideration, amend the President’s rescission requests, or decline to vote on them.

- The new procedures would allow the President to withhold funding for 180 days after he proposed a package of terminations, even if Congress voted quickly to reject the terminations. If the President submitted a package of cancellations in the spring of a year, he could effectively kill various items simply by withholding funding until the end of the fiscal year on September 30, even if Congress had acted swiftly to reject his proposed cancellations.³

This lengthy period of withholding obviously is not necessary, since the fast-track mechanism in the proposal would require a vote in Congress within 13 days of Congress receiving the President's package of proposed cancellations. The existing rescission procedure allows the President to withhold funds requested for rescission for 45 days, not 180 days. (In recent Congressional testimony, Rep. Paul Ryan stated that the bill's 180-day withholding provision "is required to make sure that Congress has the opportunity to act if the President's rescission proposal is made directly before an extended recess."⁴ This argument does not withstand scrutiny. The bill could have followed the current rescission procedures, under which the clock on the withholding period does not run during Congressional recesses of more than 3 days. The Administration evidently made a decision not to follow that approach and instead to allow the President to continue withholding funds regardless of Congressional action.)

- Exacerbating this problem, it appears that if the President proposed the rescission of funds under either the existing rescission procedure or the new procedure and Congress did not accede to his request, the President could then re-propose the same rescissions under the other procedure, withholding the funds for an additional period of time and thereby increasing the chances that the funding would effectively be cancelled despite congressional opposition to the cancellation. (The funding would effectively be cancelled if the fiscal year ended before the withholding period did.)

- Another difference between the proposed procedure and the President's current rescission authority is that under the new procedure, the President could propose the elimination of appropriations for discretionary programs but not a reduction in funding for such programs. If the President wanted to reduce but not eliminate a program or line item, however, he could continue to use the existing rescission procedures.

- Another significant point is that under the new procedure, if Congress enacted a package of cancellations that the President had submitted, the Budget Committee Chairmen would reduce accordingly the amount allocated to the Appropriations Committees for the fiscal year in question. The effect would be to dedicate all savings from the cancellations to deficit reduction.

This rigid approach is problematic, however, and could well prove self-defeating. A legitimate purpose of eliminating certain unworthy projects may be to direct scarce funds to higher priority programs, but that would not be permitted under the new procedure. And without the opportunity to redirect at least some of the savings to better uses, Congress is likely to be less willing to approve the President's package of cancellations in the first place.

- The new procedure could be applied not only to appropriations for discretionary programs but also to new entitlement legislation and to new "targeted tax benefits" contained in recently enacted tax bills. The President could propose to cancel or scale back an increase in benefits or eligibility in a provision of an entitlement bill if he submitted his request after enactment of the bill but before his next annual budget was issued.

Since many entitlement increases work by making additional categories of people eligible for benefits or increasing benefits by changing the formulas for calculating them, the authority to scale back a new entitlement increase appears to give the President the authority to change entitlement laws in unexpected ways. For instance, if Congress created a Medicare "buy in" option for uninsured people between the ages of 62 and 65, the President might be able to use the new procedure to scale back this entitlement increase by raising the buy-in age to 63 for some types of people and to 64 for others, even if Congress had not created any such distinction between eligible individuals.

- The story is quite different with regard to "targeted tax benefits," which the President could propose to cancel but not to scale back. Of particular note, under the Administration's proposal, the term "targeted tax benefit" would be defined so narrowly that it appears Congress could design special-interest tax breaks so they would be exempt from any possible presidential rescission.

Targeted tax benefits would be defined as measures that provide a tax break to 100 or fewer beneficiaries. The definition of targeted tax break used in the proposal is identical to the definition used in the Line Item Veto Act of 1996. At the time the earlier legislation was enacted, the Joint Committee on Taxation indicated that

tax benefits generally could be drafted in ways that would make them exempt from this presidential authority, even if they were targeted to 100 or fewer people.

Note that the proposal would establish unequal treatment of entitlement increases and tax breaks. The President could use the proposed fast-track procedure to force a vote on the cancellation of an entitlement improvement that would benefit millions of people, but he would not be able to force a vote on a tax break if it benefited as few as 101 people. This is despite the finding by Congress's Joint Committee on Taxation, the Government Accountability Office, and former Federal Reserve Chairman Alan Greenspan that many tax breaks are analogous to entitlement programs and are properly thought of as "tax expenditures" or "tax entitlements."⁵

In addition, the President could modify and rewrite entitlement improvements and create new entitlement categories and program distinctions that Congress never intended, but he could make no such modifications even in targeted tax cuts affecting fewer than 100 tax payers; he could only accept these targeted tax breaks or propose to cancel them.

Finally, the new procedure would place the savings achieved by vetoing an entitlement increase into a "lockbox," as with vetoed items from appropriations bills. But the savings from vetoing a targeted tax benefit would appear not to be placed in a lockbox and thus would remain available for another tax cut (although the drafting of the bill is murky on this point).

WOULD THE PROPOSAL REDUCE THE DEFICIT?

The Congressional Budget Office has suggested that the consequences of this proposal might be to increase total spending rather than reduce it, because "Congress might accommodate some of the President's priorities in exchange for a pledge not to propose rescission of certain provisions, thereby increasing total spending."⁶ CBO says that studies of states with line-item vetoes have "documented similar devices employed by state legislatures."⁶

The columnist George Will makes the same point:⁷

Arming presidents with a line-item veto might increase Federal spending, for two reasons. First, Josh Bolten, director of the Office of Management and Budget, may be exactly wrong when he says the veto would be a "deterrent" because legislators would be reluctant to sponsor spending that was then singled out for a veto. It is at least as likely that, knowing the president can veto line items, legislators might feel even freer to pack them into legislation, thereby earning constituents' gratitude for at least trying to deliver. Second, presidents would buy legislators' support on other large matters in exchange for not vetoing the legislators' favorite small items.

Congressional Research Service senior specialist Louis Fisher also came to the conclusion that presidents would more likely use line-item veto authority to pressure lawmakers to support White House spending policies by threatening to cut Members' pet projects, than to reduce total spending or the deficit. In a 2005 report, Fisher warned that "experience with the item veto, both conceptually and in actual practice, suggests that the amounts that might be saved by a presidential item veto could be relatively small, in the range of perhaps one to two billion dollars a year. Under some circumstances, the availability of an item veto could increase spending. The Administration might agree to withhold the use of an item veto for a particular program if Members of Congress agreed to support a spending program initiated by the President. Aside from modest savings, the impact of an item veto may well be felt in preferring the President's spending priorities over those enacted by Congress."⁸

Finally, Douglas Holtz-Eakin, director of the Congressional Budget Office from February 2003 to December 2005 and now a fellow at the Council on Foreign Relations, recently observed that, "I don't think there's any evidence that this, in itself, is a powerful enough weapon to alter the path of spending." Holtz-Eakin noted that in studying the effect of line-item vetoes at the state level, he found they produced mixed results. He found no major differences in spending between states where governors had this power and states where they did not.⁹ Similarly, in his recent testimony on this proposal, the current acting CBO director noted that in the absence of a political consensus to establish fiscal discipline, "the proposed changes to the rescission process included in H.R. 4890 are unlikely to greatly affect the budget's bottom line."¹⁰

WOULD THE PROPOSAL IMPROVE THE QUALITY OF LEGISLATION AND THE POLITICAL PROCESS?

Mr. Will's second point, cited above, is not just about the size of the Federal budget but also about the political power of the President. The current division of powers gives the President the power to veto legislation, but balances this presidential

power by giving Congress the power to package legislation. The new proposal would further weaken Congress in relation to the President by enabling the President to propose cancellations that could divide the congressional coalition that had negotiated the legislation in the first place. Mr. Will concludes that “The line-item veto’s primary effect might be political, and inimical to a core conservative value. It would aggravate an imbalance in our constitutional system that has been growing for seven decades: the expansion of executive power at the expense of the legislature.”

As Will makes clear, the proposal would enhance the President’s ability to engage in political “horse-trading” with Members of Congress. The President also would gain enhanced ability to engage in political horse-trading with outside groups. Whether dealing with legislators or outside groups, the President could threaten to propose the cancellation of their favored items—or pledge not to cancel their favored items—in return for their support on other, unrelated matters. The President’s threat to cancel, or promise not to cancel, items of importance to legislators or to outside groups could be used to increase his leverage to advance policies unrelated to the budget, such as support for his nominees, for regulatory legislation, or even for foreign treaties.

These effects were recently discussed by a former staff director of the House Appropriations Committee, who testified—

There is no question that a nexus has developed between campaign fund-raising and the community that advocates on behalf of earmarks. The more earmarks a Senator or Congressman is able to win for a local university, hospital, city government or art museum, the more lobbyists he may expect to find in attendance at his fund-raisers. * * * Earmarks are increasingly used to persuade members to support legislation that they might otherwise oppose or oppose legislation that they might support. In the House this practice is now being extended to the granting of earmarks in one piece of legislation in return for a member’s vote on unrelated legislation. Chairman Thomas joked openly about the delay in consideration of the highway bill last summer so that the leadership could gain more support for the Central America Free Trade Agreement.¹¹

Some would maintain that H.R. 4890 is intended to be a partial cure for these diseases. But it could just as easily aggravate the diseases by giving the President an easier and more direct way to play the game. The premise of the proposal seems to be that the President will be less political, less interested in rounding up votes for policy issues, nomination, and other proposals, and less interested than Members of Congress in securing the financial and political support of outside groups for such purposes. Would that really be the case? Norman Ornstein, of the American Enterprise Institute, thinks not.

[T]he Republicans have rejected the one device that has been proved in the past to bring fiscal discipline, the pay-as-you-go provisions that governed fiscal policy through the golden years in the 1990’s. Instead, they are pushing a sham version of the line-item veto, basically just a sharply enhanced rescission authority for the president. Congress would pass its spending bills, the president would pluck out items he did not like and send them back to Congress to vote on them again.

Leave aside the simple abdication of responsibility by Congress here—the refusal to set up a provision to have separate votes on earmarks or related items before any bill gets to the president, and the basic message of “stop us before we spend again.” The larger reality is that this gives the president a great additional mischief-making capability, to pluck out items to punish lawmakers he doesn’t like, or to threaten individual lawmakers to get votes on other things, without having any noticeable impact on budget growth or restraint.¹²

KEY FINDINGS

- The line-item veto legislation would expand Presidential power to a greater degree than has been understood.
- If the President proposed to cancel funds appropriated for a program, Congress would have to vote on his proposal within 10 days from the bill’s introduction in Congress. But even if Congress turned down his request, he could continue withholding the funds until 180 days had passed.
- If the fiscal year ended before the 180-day period did, the funds could expire. This could enable the President to kill some types of programs even if Congress had rejected his proposals to cancel funding for the programs.
- The Congressional Budget Office, the Congressional Research Service, columnist George Will, and other analysts have concluded the legislation is as likely to increase expenditures as to reduce them, because a President could use this new authority to pressure Members of Congress to support some of his spending and tax-

cut priorities in return for a promise not to propose canceling appropriation items they favored.

- The legislation supposedly applies to both increases in entitlements and new “targeted tax benefits.” In fact, its application to special-interest tax breaks may be more apparent than real, as Congress would be able to draft new tax breaks in ways that exempted them from the line-item veto procedure.

HOW DOES THIS PROPOSAL DIFFER FROM THE LINE ITEM VETO ACT OF 1996?

Unlike H.R. 4890, the Line Item Veto Act of 1996 granted the President the unilateral authority to cancel enacted appropriations. The Supreme Court ruled in 1998 that such authority was unconstitutional, since it allowed the President to change a law by himself, thus violating the constitutional rules for creating or amending laws. The new proposal is presumed to be constitutional because it does not grant the President the authority to change an appropriations act unilaterally; rather, he would request that Congress enact a change in the appropriations law.

There are three ways in which the new proposal could grant the President more power than under the 1996 act. First, that act gave the President 5 days from the enactment of appropriations, entitlement, or tax legislation to decide whether to cancel some of its provisions, while H.R. 4890 gives the President up to a year. In addition, under the 1996 act, if Congress overturned a presidential rescission by statute, the withheld funds would have to be released; under H.R. 4890, if Congress overturns a presidential veto by defeating the President’s proposal to cancel the funds, the President can continue to withhold the funds for the 180-day period—long enough, in some cases, to effectively cancel them.

Second, the 1996 act allowed the President to cancel entitlement increases but not to scale them back. As noted in this analysis, the authority to scale back entitlement increases may permit the President to rewrite entitlement benefits in unexpected ways. (The drafting of the new proposal also suggests that the President could propose to cancel or modify provisions of new legislation that would reduce entitlement benefits. In short, it appears that he could veto or modify both entitlement increases and entitlement decreases.)

Finally, the 1996 act included a sunset provision; the act would expire after 8 years if not reauthorized. This provision apparently was included due to the uncertainty about the effects that the line-item veto legislation would have. The new proposal, by contrast, has no expiration date. It would become permanent law.

ENDNOTES

¹The text of the proposal is available at <http://www.whitehouse.gov/omb/pubpress/2006/line-item-veto.pdf>.

²Statement of Donald B. Marron, Acting Director, Congressional Budget Office, before the Subcommittee on the Legislative and Budget Process, House Rules Committee, March 15, 2006, available at <http://www.cbo.gov/ftpdocs/70xx/doc7079/03-15-LineItemVeto.pdf>.

³The appropriations provided for most programs expire at the end of the fiscal year in question. In such cases, any funds that have not been obligated by September 30 revert to the Treasury. (If the line-item veto legislation were enacted, it is possible that Congress would respond by lengthening the period of time for which appropriations for various programs would remain available, but it is unclear whether Congress would do so.)

⁴Statement of Rep. Paul Ryan before the Subcommittee on the Legislative and Budget Process, House Rules Committee, March 15, 2006.

⁵According to the Joint Committee on Taxation, “special income tax provisions are referred to as tax expenditures because they may be considered analogous to direct outlay programs, and the two can be considered as alternative means of accomplishing similar budget policies. Tax expenditures are similar to those direct spending programs that are available as entitlements to those who meet the statutory criteria established for the programs.” See Joint Committee on Taxation, “Estimates of Federal Tax Expenditures for Fiscal Years 2005-2009,” January 12, 2005, p. 2. This equivalence is why former Federal Reserve Chairman Alan Greenspan has referred to these tax breaks as “tax entitlements.”

⁶Testimony of Donald B. Marron, *op.cit.*

⁷George Will, “The Vexing Qualities of a Veto,” in the Washington Post, March 16, 2006, page A23.

⁸Louis Fisher, “Item Veto: Budgetary Savings,” Congressional Research Service, May 26, 2005.

⁹Jonathan Nicholson, “Precursor to Line-Item ‘Veto’ Failed to Restrain Prior Spending, GAO Says,” Bureau of National Affairs, Daily Tax Report, March 13, 2006, p. G-6.

¹⁰Testimony of Donald B. Marron, *op.cit.*

¹¹The highway bill was a cornucopia of earmarked projects. The testimony was by Scott Lilly before the Subcommittee on Federal Financial Management, Government Information, and International Security, Committee on Homeland Security and Governmental Affairs, United States Senate, March 16, 2006.

¹²Norm Ornstein, Three Embarrassments in an All-Around Shameful Congress, American Enterprise Institute, April 5, 2006, at <http://www.aei.org/publications/filter.social.pubID.24163/pub—detail.asp>.

Mr. HORNEY. I want to divide the testimony into two parts. The first part would talk about what I view as some of the fundamental problems with granting line-item veto authority to the President, and that is any President, not just to this President. And then second, I do want to talk about some of the problems or issues raised by the particular legislation proposed by the President and introduced in the House by Congressman Ryan. Some of those were already addressed by Ed Lorenzen, but I would like to talk a little bit more about them.

The most fundamental aspect of any line-item veto proposal is a shift of power from the legislative branch to the executive branch. Whether it is because I spent most of my career working in the legislative branch or because I have a high regard for the wisdom of the Founding Fathers in balancing the powers between the branches of government, I have a great reluctance to see a further grant of power from the legislative branch to the executive branch.

In this I agree with the columnist George Will, who has written: "The line-item veto's primary effect might be political, and inimical to a core conservative value. It would aggravate an imbalance in our constitutional system that has been growing for seven decades: the expansion of executive power at the expense of the legislature."

I can understand how people who might even share the concern about that transfer of power would still say this might be worthwhile if giving this grant of power to the President had a real likelihood of doing anything to help bring our serious long-term budget problem under control. But I think, as other witnesses have testified, that is pretty unlikely, given the limited nature of the line-item veto.

In particular, the long-term problem we face is posed primarily by the anticipated growth of three entitlement programs—Social Security and, more importantly, Medicare and Medicaid—that are anticipated to grow in coming decades much faster than the economy will grow and than revenues will grow.

The line-item veto, of course, is not well designed to get at the problems either with those entitlement programs or with taxes because it deals only with new legislation, and the entitlement programs and revenues are generally controlled, governed by permanent law. So you can't use line-item veto to get the underlying policies governing those programs. What that means is you are left with the primary effect of the line-item veto potentially on about one-third to two-fifths of the budget represented by programs that are controlled by annual appropriations. That obviously is still a lot of money.

And again, if the line-item veto offered a high likelihood of getting rid of wasteful spending in the discretionary area, again, I can see how people might say they are willing to chance this transfer of power. But, again, I think the likelihood of that happening, that the actual result of giving the President line-item veto authority will be to get rid of wasteful spending, is probably not very high.

The assumption that we will get rid of wasteful spending, that that will be the primary effect of the line-item veto, is on the basis that the President will use the power primarily for that purpose

and not to try to forward and advance other priorities that he has. But I know of no reason why we would expect we could give an additional grant of authority to the President and then the President would not use that to try to advance whatever policy he is focusing on at the moment. So I think again it is likely that you would end up with a President talking and at least hinting to a legislator that if the legislator would support him on a trade pact, on an immigration bill, on a judicial nominee, then he is likely not to propose a veto of some particular program that the legislator supports.

Again, I am not the only person who thinks this. Norman Ornstein, the noted congressional scholar at the American Enterprise Institute, has written that the line-item veto "gives the President mischief-making capability, to pluck out items to punish lawmakers he doesn't like, or to threaten individual lawmakers to get votes on other things without having any noticeable impact on budget growth or restraint."

And again, even if you look only at the budget aspects of what the President might do with line-item veto, it is far from clear that the effect would be to reduce spending. Again, the President could use the promise not to veto a particular item that legislators are interested in in order to get support for tax cuts or entitlement increases that the President supports that cost far more than all of the items the President might consider vetoing.

Again, not the only ones who think that. Acting Congressional Budget Director Donald Marron, in testimony to the Senate Budget Committee earlier this month, said that "the Congress might accommodate some of the President's priorities in exchange for a pledge not to oppose the rescission of certain provisions, thereby increasing total spending."

Mr. RYAN. Sir, I am wondering if you could wrap it up.

Mr. HORNEY. Okay. So the idea, it is entirely possible the effect of this would be to actually increase spending. As Congressman Spratt suggested that while many people could have a reasonable disagreement about how President George W. Bush might use the authority, it is hard to imagine anybody seriously arguing that a President like Lyndon Johnson would use it to reduce spending.

Ed Lorenzen pointed out the various problems about the President's flexibility in packaging and sending up legislation. I think that is a real concern Congress needs to address and try to limit that. I think there is a particular concern—and I think many people share this—about the 180-day period the President can withhold the money, because, in fact, if he simply waits until the early part of April to submit a proposal, then the money, if it is 1-year money, expires at the end of the year. I think there are ways to get around that, for instance, the suggestion by Ed Lorenzen that once either House has voted down the resolution, then you release the funds. I think there may be a constitutional question with that. I think scholars differ on that.

There is another way to do it, which is to reduce the period of withholding to—probably wouldn't need any more than 15 days—but do the calculation of the withholding period on the same basis that you do the period when Congress has to act. In other words, under the requirement, Congress acts within 13 days. If they go out on recess, the clock stops. Calculate the withholding period on

the same basis; if Congress goes out on recess, the clock stops. So you can set it that some few days after Congress is required to act, then at that point the President has to release the funds unless they have enacted a rescission bill.

One final thing, and then I will wrap up, is concern about the direct spending under the proposal. This proposal allows the President not only to strike—

Mr. RYAN. We can get into these in questions. It is just that we are well beyond the 5 minutes, and I want to give Members a chance because we are going to have a vote relatively soon.

Thank you very much, and I appreciate your comments, Mr. Horney.

[The prepared statement of Mr. Horney follows:]

PREPARED STATEMENT OF JAMES R. HORNEY, SENIOR FELLOW, CENTER ON BUDGET AND POLICY PRIORITIES

Mr. Chairman, Congressman Spratt, and Members of the Committee, I appreciate the opportunity to appear before the Committee on the Budget today to discuss the line-item veto legislation proposed by the president and various members of Congress. I am currently a Senior Fellow at the Center on Budget and Policy Priorities, a nonpartisan policy and research institute, which receives no grants, contracts, or other funding from the government. Before going to work at the Center, I spent more than twenty years working in the Legislative Branch, as a staffer at the House Budget and House Rules Committees, the Senate Budget Committee, the Government Accountability Office, and the Congressional Budget Office.

I want to divide my testimony today into two parts. First, I want to discuss what I consider the fundamental problems with granting the president—any president—line-item veto or expedited rescission powers. Then I would like to discuss some of the issues raised by the particular legislation proposed by the president and introduced in the House as H.R. 4890 by Congressman Ryan. With the permission of the Committee, I would also like to submit for the record a paper written by my colleague at the Center on Budget, Richard Kogan, entitled “Proposed Line-Item Veto Legislation Would Invite Abuse by Executive Branch.” That paper goes into more detail about the matters I will discuss in my testimony.

The most fundamental aspect of any line-item veto proposal is to shift power from the legislative branch to the executive branch. Whether because of a career spent primarily working for the legislative branch (although that ensures I know the shortcomings of Congress all too well) or my basic regard for the wisdom of the founding fathers in balancing powers in our government, I am troubled by the idea of further enhancing the power of the executive branch. I agree with columnist George Will, who has written that “The line-item veto’s primary effect might be political, and inimical to a core conservative value. It would aggravate an imbalance in our constitutional system that has been growing for seven decades: the expansion of executive power at the expense of the legislature.”

I could understand, however, how even some who share my concern about shifting power to the executive branch in general might believe that giving the president line-item veto authority would still be worthwhile if it were likely to significantly help in bringing our long-term deficit problem under control. But I do not believe that giving the president line-item veto authority is likely to produce that result.

First of all, a line-item veto is not well-suited to getting at the biggest cause of our real, long-term budget problem. That long-term problem is posed primarily by the fact that under current policies the cost of three big entitlement programs—Social Security, Medicare, and Medicaid—are projected to grow at a rate that will exceed the growth of the economy and revenues, leading to ever higher deficits, borrowing, and debt unless the policies guiding those programs and taxes are changed. Because those entitlement programs and revenues are generally governed by permanent law, the line-item veto—which provides only the opportunity to modify new legislation—is not a tool that can be used to make changes in the underlying laws governing entitlements and taxes (and, as I will discuss shortly, the ability to use the proposed line-item veto even to make changes in new tax legislation is very limited).

As a result, the potential effect of the line-item veto is to a large extent limited to the one-third to two-fifths of the budget determined through annual appropriation legislation. That is, of course, still a large enough portion of the budget to be con-

cerned about, and if the line-item veto offered a realistic chance of limiting unwise spending in that area, it might still be worth trying. But I think that the line-item veto is unlikely to have that effect.

The success of the line-item veto in limiting unwise discretionary appropriations depends on the president using the authority solely or primarily to eliminate such unwise spending, as opposed to using the authority as leverage to gain support in Congress for any number of policies he is pursuing. But why should we expect that a president would not use this power to help him achieve a variety of goals; for instance, to promise a legislator that he will not veto an item favored by that legislator in return for a vote on a judicial nominee or a trade pact supported by the president. Norman Ornstein, the noted Congressional scholar at the American Enterprise Institute, concludes that the line-item veto “gives the president a great additional mischief-making capability, to pluck out items to punish lawmakers he doesn’t like, or to threaten individual lawmakers to get votes on other things, without having any noticeable impact on budget growth or restraint.”

And, it is far from certain that any effect that the line-item authority might have on the budget would be to restrain spending. For instance, a president could promise not to veto a particular item in return for the sponsor of that item agreeing to support new spending or tax cuts proposed by the president that far exceed the cost of items the president might consider vetoing. It is not unlikely that giving the president line-item veto authority would actually increase spending and deficits compared to what would occur without the line-item veto.

We at the Center on Budget are not the only ones who think this is a possibility. Acting Congressional Budget Office Director Donald Marron, for instance, told the Senate Budget Committee earlier this month that “the Congress might accommodate some of the president’s priorities in exchange for a pledge not to propose rescission of certain provisions, thereby increasing total spending. As CBO has previously testified, studies of the line-item veto at the state level have documented similar devices employed by state legislatures over the years * * *.”

Columnist George Will also concluded that the line-item veto might not have the desired effect of reducing spending, explaining: “Arming presidents with a line-item veto might increase federal spending, for two reasons. First, Josh Bolten, director of the Office of Management and Budget, may be exactly wrong when he says the veto would be a ‘deterrent’ because legislators would be reluctant to sponsor spending that was then singled out for a veto. It is at least as likely that, knowing the president can veto line items, legislators might feel even freer to pack them into legislation, thereby earning constituents’ gratitude for trying to deliver. Second, presidents would buy legislators’ support on other large matters in exchange for not vetoing the legislators’ favorite small items.”

I would imagine that reasonable people could have different views about how president George W. Bush might use the line-item veto, but I wonder how many people would be willing to argue that giving line-item veto authority to a president like Lyndon Johnson would reduce spending.

Let me turn now to a few of the problems that are presented by the particular version of the line-item veto proposed by the president.

First are issues related to the submission of the president’s proposed rescissions. Under the administration’s proposal, the president would have enormous flexibility as to when he can submit proposed rescissions and how he could package his rescissions. For instance, the president would be able to propose to rescind a discretionary appropriation at any time as long as the funds appropriated remain available for obligation. For multi- or no-year appropriations that remain available for obligation for more than one fiscal year, the president could even wait several years after an appropriation is enacted before proposing the rescission. For entitlement program increases or targeted tax provisions, the president could submit a veto proposal any time after legislation is enacted and before his next budget is submitted. Furthermore, the president would be able to submit multiple rescission bills for any single appropriation, entitlement, or tax bill, or to submit a proposed rescission bill that includes rescissions of items from any number of different bills (combining, for instance, rescissions of discretionary appropriations, entitlement increases, and tax provisions in the same rescission bill). The Congress would then have to consider, but would not be able to amend or modify in any way, each of the bills the president submits. This gives the president the ability to affect the Congressional legislative agenda to a far greater degree than he currently can.

Second, and perhaps more importantly, the administration’s proposal would effectively allow the president to permanently rescind discretionary funding even if the Congress votes down his proposed rescission legislation. Under the administration’s proposal, discretionary funds the president proposes to rescind can be withheld for up to 180 days after the president submits his rescission to the Congress, even if

the bill proposing to rescind the funds is defeated by the Congress within days of being submitted. In the case of appropriations that are only available for one fiscal year, the president could wait until April 1 to submit rescission legislation and then withhold funds proposed for rescission in that bill until the end of the fiscal year, at which time the funds expire. Thus, whatever action the Congress takes on the proposed rescission legislation, the funds would be cancelled.

It is not necessary to have this 180-day withholding period in order to ensure that Congress could not put off voting on the rescission package and still secure release of funds proposed for rescission by taking an extended recess until the withholding period has passed. The simplest way to achieve this without allowing the president to withhold funds long after the Congress has voted against his proposed legislation would be to require the president to release the funds as soon as either House votes against the rescission package, but that approach might run afoul of the Supreme Court's decision that a one-House veto is unconstitutional. But it is also possible to achieve the desired result by calculating the period for which the president can withhold funds on the same basis as the period during which Congress has to consider the proposed rescission package, with the withholding period extending a few days beyond the Congressional deadline. The administration's proposal requires the House and the Senate to vote on the rescission package within 13 days of session after receiving the president's proposed rescission package. If the president were allowed to withhold funds proposed to be rescinded for 15 days of session of the House or 15 days of session of the Senate, whichever is longer, then Congressional action would have to be completed before the president would be required to release the funds (assuming Congress did not pass the rescission bill). If Congress delayed acting on the rescission bill by taking an extended recess, the withholding period would be extended by the length of that recess.

Finally, I want to briefly address concerns about the way the administration's proposed line-item veto procedures would apply to new entitlement legislation and to "targeted tax benefits" included in new tax legislation. The president would be allowed to propose to cancel or scale back proposed increases in entitlement spending contained in new legislation. Since many entitlement increases occur as a result of making additional categories of people eligible for benefits or increasing benefits by changing formulas that determine them, the authority to scale back a new entitlement increase appears to give the president the ability to change entitlement laws in ways the Congress never anticipated in drafting the legislation. For instance, if Congress created a Medicare "buy in" option for uninsured people between the ages of 62 and 65, the president might be able to use the authority granted by the line-item veto proposal to scale back the entitlement increase by raising the buy-in age to 63 for some types of people and to 64 for others, even if Congress had not created any such distinction between eligible individuals.

In contrast, the administration's proposal would only allow the president to cancel, but not scale back, targeted tax benefits. More troubling is the fact that targeted tax benefits are defined—as they were in the 1996 line-item veto legislation—so narrowly that it appears Congress could design special-interest tax breaks so that they would be exempt from any possible presidential rescission. Only measures providing tax breaks to 100 or fewer beneficiaries can be considered as targeted tax breaks, and further restrictions on the definition led the Joint Committee on Taxation to conclude in 1996 that tax benefits could generally be drafted in ways that would make them exempt from the presidential line-item veto, even if they were targeted to 100 or fewer people.

Note that the proposed line-item veto procedure would establish unequal treatment of entitlement increases and tax breaks. The president could use the proposed line-item procedure to force a vote on the cancellation of an entitlement improvement that would benefit millions of people, but would not be able to force a vote on a tax break if it benefited as few as 101 people. This is despite the finding by the Joint Committee on Taxation, the Government Accountability Office, and former Federal Reserve Chairman Alan Greenspan that many tax breaks are analogous to entitlement programs and are properly thought of as "tax expenditures" or "tax entitlements."

In conclusion, there are a number of troubling aspects of the particular line-item veto plan proposed by the administration, but even if such flaws as the 180-day withholding period were corrected, I believe the fundamental problem with any line-item veto proposal—the shift in power from the Congress to the president without any real likelihood that the shift will improve budget outcomes—should deter Congress from enacting a such a plan.

Mr. RYAN. I will start off. No. 1, Mr. Spratt, you raised a number of concerns—all very important and valid concerns, I might add—

as to the issue of whether or not this line-item veto is the panacea that is going to balance the budget. No one is pretending that it is. Mr. Hensarling, Chocola, and I have introduced comprehensive budget process reform, as have many other Members. This is 1 of 16 ideas we are proposing on getting our hands around our fiscal house and reforming the budget process. So this was never meant to be the end of the system to change the way we spend money; this is one of the important components of doing it. That is point No. 1.

Mr. Spratt, I would like to address some of the points you made, which I think are extremely important. When we introduced this bill a number of months ago, we introduced it with the sole intention of putting it out there to get feedback and responses from people as to how it can be improved. Let us go through a couple of these issues.

Duplicative submissions. It was never the intention when I drafted this bill that the President could just keep redoing the same request over and over to run out the clock. I think that is something we can clearly address in the amendment process hopefully here in a markup.

A sunset date, I think that is something we should also discuss.

Bundling proposals. Can the President submit 115 proposals and tie Congress up in knots? That is not the intention either. And that is something we can also address, hopefully, in the amendment process.

Limiting the number of requests. That as well I think is something we can address.

Deferral. This is the big issue that I think Mr. Horney brought up and Mr. Spratt brought up, very important issue, a 180-day deferral is long. Here is the reason why it is in this bill in its current form, which I am looking at ways of changing it. My original idea was to have a legislative day, say 10 to 20 legislative days, because then you can incorporate a recess. A legislative day calendar incorporates those recesses. My fear is that if we do an omnibus appropriation at the end of the legislative process—I am not a big fan of omnibuses, but we have done them—let's say we do one at the end of October, go into recess, we don't come back until January 20 for the State of the Union, Congress could set this up so that the President couldn't defer beyond that window and then run up the clock and not be prone to this tool.

So that is why I thought legislative days would have been the answer. Constitutionally it doesn't work. You can't really find many lawyers that tell you that works, so we have a constitutional problem with that approach.

The other approach, having it conditioned upon the recess date, we have constitutional issues there, I believe. So I am convinced that we would have a court problem if we did it that way. So it is difficult to find an airtight constitutional way of limiting this time, and that is something that we are still looking for.

And, Mr. Spratt, I would really enjoy some suggestions from you on how best to improve that. One of the things that I think we can do to improve this so that this can't be a tool of abuse by any President with deferral authority is to limit the upfront time, limit the time in which he can submit this request after a bill is signed into

law. That helps tighten the schedule at the front end, and then on the back end we have to work on making sure that the deferral isn't excessively long. Hinging it on whether Congress acts or not is something that I would like to do; again, I think we have some legal problems with that as well.

So these all get into sticky constitutional issues. If we are not worried about that, we could make this easy, 10 legislative days or something like that, done, case closed. I don't think you would have an abuse of power on deferral, and Congress would have an air-tight system. There are some constitutional issues, and that is something we are going to have in a hearing here, I think, in 2 weeks with some constitutional scholars.

Mr. Toomey, let me just ask you a quick question. You served here for 6 years, and you witnessed the process, you witnessed the process at the end of the stage of the process at the conference reports where a lot of things get stuck in a conference report. As a member of the Ways and Means Committee, I see it happen on tax policy all the time; as a member of the Budget Committee, watching the appropriation bills go through, you see a lot of stuff get put in at the end of the stage, provisions that never had hearings, provisions that never received scrutiny.

Do you think this is a good tool that can help bring some kind of accountability at the end of the process? And the rest of the three of you witnesses, if you would like to comment on that point as well.

Mr. TOOMEY. Well, I think it would. I think the tendency would be—first of all, I support a number of the other budget process reform measures that you and others have promoted. And I think the main common element in these things is more transparency, more openness, more scrutiny, allowing Members and the public to be more aware and give more consideration to some of these proposed spending measures, especially those that haven't gone through a normal hearing process. And it strikes me that if these provisions are subject to the review of the President and the possibility of a separate up-or-down vote, then it influences the beginning of the process as well.

Just the awareness of that, I think, would suggest that Members might take a more cautious approach to what they will suggest. And while we all necessarily—we will have to speculate about what the net effect of this bill would be if it were signed into law, I have to disagree with some of the other panelists. I think the tendency would be to reduce the number of these earmarks and this kind of spending rather than to increase it. Ultimately we won't know unless and until it actually becomes law.

Mr. RYAN. Thank you. And I apologize to the other witnesses. I spent too much time talking, but I want to stick to the 5-minute rule so Members get a chance to ask the questions. So if later on if you want to make those comments, I would encourage it.

At this time I would like to recognize Mr. Spratt.

Mr. SPRATT. Thank you all for your testimony because we have pretty well the spectrum here.

Ed, you will remember over the years this bill went through an evolutionary process, and I think Charlie Stenholm was one of the first to promote it, along with Tom Carper, and it went through a

number of different committees, Government Operations, this committee and Rules Committee, and as it did, it got fine-tuned more and more.

When we had the constitutional line-item bill on the House floor, I got up and offered as an addendum to it expedited and enhanced rescission. And I said this bill is unconstitutional—excuse me, it was not unconstitutional, it was a statutory line-item veto based on the presumption that the President had this authority under the Constitution. As Bob Bork once said, if the President had that power, how come nobody has noticed for the last 210 years?

In any event, what I said on the House floor to my Republican colleagues across the aisle was, add this to it as an addendum to it, and when the first section gets held unconstitutional, as it almost certainly will, you have some standing law as a fallback. They wouldn't vote for it. I am not even sure, Paul, that they allowed it to be made in order. I got up and made some kind of protestations about it, but it never became law.

But the ostensible concern there was that the Senate would buy off on expedited rescission and not give passage to the tougher part of the bill. That was an opportunity to put this in law on a trial basis.

One of the things that came out of our study of the bill and our consideration of the bill was this idea to have a petition of, say, 50 Members who would be able to break out an individual item, an individual cluster of items, and have a separate vote on it. You recall the pros and cons of that, Ed?

Mr. LORENZEN. Yes. The pros of that approach is that it allows Members to get an individual vote on their item; that if a military construction appropriations bill was passed, and the President submitted 25 rescissions of that package, that there may be an individual Member may feel like his or her individual project is defensible, but would not want to be dragged down by the other proposals that are in there. So allowing the individual Member to get a vote on his or her individual projects, if they could convince enough of the Members, would allow them to separate that out. And also, absent this type of process, the President could intentionally—potentially thwart the will of Congress by packaging one or two rescissions that Congress wouldn't support in a package of many other provisions that Congress would never—would be reluctant to reject.

So again, the ability to strike out these more controversial ones would prevent the President from abusing it. And furthermore, it may make it more likely that you not have one or two controversial items sink down the savings in the rest of the package.

Mr. RYAN. Can I ask a clarifying question; was it 15 or 50?

Mr. LORENZEN. It was 15 in the House and 15 in the Senate.

Now, the two arguments against it are, No. 1, the President submitting an entire package, and the view that the President should get a vote on his package as a whole. The other concern, as it comes to the procedural matter, is under the expedited rescission, without a separate vote, the House and Senate would either pass or reject the identical versions, there would be no conference. There is the issue that if the House were to strike out two package provisions, and the Senate were to strike out two separate provisions,

you have to go to a conference. And there would be serious constitutional problems with trying to maintain an expedited process at that point.

Mr. SPRATT. Let me switch over to a couple other things. That is one idea for modifying it so that the President has to choose selectively, or at least we get the opportunity—now, some people say that means the committee chairmen would get all their stuff approved, and the back benchers would never be able to carry a vote. There are all kinds of political considerations at stake here.

Mr. SCHATZ, did I understand your testimony to be that you thought the President could defer signing an appropriation bill for up to 6 months?

Mr. SCHATZ. I did not speak to that provision, Mr. Spratt. It is something that I think should be examined by the committee. It is certainly different than the prior enhanced rescission procedures that we have supported. So I would like to certainly encourage the committee to think about that. I understand what Mr. Ryan said and is trying to do. There has to be some time limit; 6 months is probably too long.

Mr. SPRATT. Mr. Toomey, you have served here before. Wouldn't you agree there has to be some sort of pretty narrow window within which the President has to act or forego the option?

Mr. TOOMEY. There probably ought to be some constraint on the time. And I think, as Congressman Ryan mentioned, there are probably a number of areas where this proposal could be tweaked and improved.

Mr. SPRATT. Thank you. My 5 minutes is up.

Mr. RYAN. Mr. Ryun is gone.

Mr. Hensarling.

Mr. HENSARLING. Thank you, Mr. Chairman.

Personally I find it difficult to believe that any work of yours would need improving or tweaking, but I can at least admit to the possibility.

Mr. Schatz, in your testimony you mention that—and I think we all agree—that relative to the size of the Federal budget and relative to the size of the Federal deficit, that line-item veto geared toward earmarks is a relatively small portion of the budget—huge compared to the salaries of the American people. But you mention that even though the money saved is relatively small and limiting waste, it could have a substantial effect on the spending culture. Can you elaborate on that statement in your testimony?

Mr. SCHATZ. Yes, Mr. Hensarling. The appropriations process, as you are all certainly aware, consumes an enormous amount of time. And given the number of requests that go to the subcommittees, those in turn also take a tremendous amount of time. And I think the consequences of those activities have been seen, the Jack Abramoff scandal, the Duke Cunningham sentencing, that it can literally get out of control. Some say it borders on legalized bribery, and in some cases obviously it has been illegal.

We are not trying to stop that or address it. If somebody is going to be bribed, they are going to be bribed, but the point is that it would—in terms of the time that these appropriations subcommittee should be spending, it would take up less of their time.

One of the reforms that we have suggested is that nothing should be appropriated if it has not been the subject of a hearing. Now, there were thousands of requests last year; we understand they are down this year because of the earmark reforms being proposed, and the fact that the committee might be recognizing it takes a lot of their time, but we have hearings on everything else, and it would take up even more time if hearings were held on these various proposals. So that is our point that it is not a lot of money, but it takes up a lot of time and energy.

There is a whole business out there of people going out recruiting municipalities—the Montgomery, Alabama, YMCA has its own—to go get earmarks lobbyists. It is just extraordinary where we have come over the years in terms of what people are looking for from Congress. If there is a lack of oversight generally, it makes it even harder to do that job.

Mr. HENSARLING. Thank you.

Mr. Toomey, I think that Mr. Horney had made the point that he could envision a scenario where if we passed some version of Mr. Ryan's legislation, it could actually lead to more spending. I believe in your testimony you mentioned that I think 43 or 50 Governors have something similar to the Ryan idea. So what do we observe in the real world in these other States? Have you looked at the actual case histories in our so-called laboratories of democracy? Are they spending more money or less money than they otherwise would because of this tool?

Mr. TOOMEY. I don't have with me a systemic analysis of those States that have versus those States that have not, but I think that is certainly a very worthwhile exercise to undertake. But I would like to make an observation, something that we understand about our political system, both at the State level and the Federal level, and that is by its very design, every elected member of the legislative bodies necessarily have a somewhat narrow and parochial obligation to represent this fraction of the overall geographical area they represent, be that a State or the entire country. And it is only the executive that is elected to represent the entire—in the case of the Federal level, the entire country. So it is only the President that has no narrow geographical, limited parochial interest in mind, and has necessarily the entire country's interest, and so there is a fundamental dynamic here. And we have seen that that dynamic has led to an explosion in these earmark requests here at the Federal level, and we think that it is time for a counterweight to that, some measure that would shift a little bit of—and power is almost too strong a word. It is an opportunity to focus a spotlight. It is really little more than that. To give that opportunity to the person who is elected to represent the entire Nation just seems to make a lot of sense to us.

Mr. HENSARLING. If I could interrupt my friend—I know the chairman is running a pretty mean gavel. I would like to slip in another question in 24 seconds.

Mr. Lorenzen, in your testimony you talk about your Fiscal Wake-Up Tour, and I think you made a fascinating point there, that the individuals who were involved in this know that tough choices have to be made in entitlement spending, but they are not

willing to make them if they think that earmark pork barrel spending will continue.

So what is the nexus that you see between some version of enhanced rescission and changing the attitude of the American public and their willingness to open their minds to entitlement spending reform?

Mr. LORENZEN. Well, as I said in my testimony, I believe that having a greater confidence that the tax dollars are being spent wisely—and Congress has already gone after the waste and abuse—will make a greater willingness to make greater sacrifices. I think that it will send a signal that elected leaders are willing to give up what is perceived as sort of their special-interest spending, and therefore—and they are willing to make sacrifices, and the public is willing to do that.

As I said, at every one of these Fiscal Wake-Up Tour events, we go through in great detail talking about the long-term problems and dealing with entitlements, and people recognize that and agree with that, yet the questions still come back to let us get rid of waste.

So I think it was a very clear message that we have seen that they want to first see the sacrifice being shared by everyone, and bringing out waste is a way to ensure that Members of Congress are contributing to some of the sacrifices.

Mr. HENSARLING. Thank you. My time is expired.

Mr. RYAN. At this time I would like to ask unanimous consent to allow Mr. Spratt to ask a quick follow-up question.

Mr. SPRATT. I just want to make an observation in response to your question about what did we learn about the actual results.

A number of Members who had served in State legislatures when we were processing these bills in the past recalled and observed that where there Governors had very strong veto authorities, the tendency of the legislature was to lob on a lot of these special projects, knowing that the Governor would have to exercise his veto and prune and purge the bill, and it tended to give them an incentive, actually, to add this stuff in, knowing it would eventually be filtered out. Whether you can document that or political scientists could make the case for that, I am not sure, but it certainly came up anecdotally in a lot of testimony we received in years past.

Mr. RYAN. Well, if I knew you were going to make that point, I am not sure I would have yielded to you.

At this time, I want to yield to Mr. Neal.

Mr. NEAL. Thank you very much, Mr. Chairman.

For the members of the committee panel, just ask you a question—I think this can be done with a yes or no—in our constitutional system, do Members of the Congress serve under the President?

Mr. TOOMEY. No.

Mr. SCHATZ. No.

Mr. LORENZEN. No.

Mr. NEAL. So we serve with the President.

Is it the position of the members of the committee, Mr. Toomey, you were a pretty capable guy when you were here. Does Congress currently have the tools that are necessary to balance the budget?

Mr. TOOMEY. Together with the President. The President has to sign anything that Congress—

Mr. NEAL. But are the tools available to us?

Mr. TOOMEY. Theoretically, sure.

Mr. NEAL. It is more than theory, because we did it.

Mr. TOOMEY. More often than not, we have not done it.

Mr. NEAL. That is not the point. The point is why embrace an artificial solution when Congress already has the ability to do this.

I liked your suggestion about transparency. That would go a long way toward curtailing some of these suggestions about spending.

Now let me ask you another question here. Why would Members of the Congress, given what we have witnessed for the last few years—and I have been consistent on this because I opposed the line-item veto when Clinton was President, and I want to remind Members of the body here how chilling that effect was when it was in place for a brief period of time—to call down to the White House to ask them if they would look favorably upon your proposal.

I think we are going down this term limits argument—and, by the way, they are all still here, the ones that were for it, a lot of them are. Then we embraced the issue of, remember, the balanced budget amendment to the Constitution. We are here because of what the majority has done. Everybody is familiar with the K Street Project and what happened. That is why we are here today with another artificial solution. I thought these issues in some part were settled at Runnymede in 1215.

The argument that we don't want to arm Lyndon Johnson during Vietnam with more tools than were necessary—and, you know, Lyndon Johnson said to Richard Russell in 1965 that Vietnam is a mistake and that things look very glum. McNamara on those tapes is saying the same thing in 1965 and 1966.

So I would remind our colleagues they acknowledge in 1965 that it is a mistake and that it is not going anywhere, and the war went on until 1974. How many kids were killed? You can come up with a pretty good number. We went from 20,000 to 58,000 when, in the privacy of the White House, there was an acknowledgment that it wasn't going to be won on the terms that were being offered.

What I am arguing with you today about is why would Members of Congress cede their authority to the White House, to any President? Transparency, as Mr. Toomey suggested, is the answer. Put it out there. Let people see what is being requested.

You and I know, Mr. Toomey, based upon your experience here, that some of the Members of the House that did the most screaming and hollering about spending sent the most letters to the appropriators. Just kick the letters out there, and there will be far fewer of those people in the well. And this is not an attempt to gain any upper hand.

Did you ever request an earmark when you were here?

Mr. TOOMEY. Probably two or three.

Mr. NEAL. Okay.

Mr. RYAN, have you requested any earmarks?

Mr. RYAN. Probably two or three.

Mr. NEAL. Two or three.

Mr. RYAN. None this year.

Mr. NEAL. We all know the reason why they are not being requested this year. But I have requested them this year because I am pleased to defend the ones I have requested.

Back to another point here that I think is essential. One of the reasons we find ourselves in the position that we are in today is because Congress for the last few years, probably 5 or 6, has forfeited oversight responsibility. All you do with the line-item veto proposal is shift spending priorities to the White House. Then the President will determine what the priorities are for the country, rather than the ability to share that responsibility, as Mr. Toomey has accurately suggested.

Mr. TOOMEY. May I respond briefly?

First of all, I share your preference for greater transparency, as I pointed out before. I share your view there should be greater oversight and that has been a shortcoming of Congress for a number of years.

But I would simply suggest that there is an infinite possible array of rules by which Congress could conceivably go about the spending process. There is a long number of proposed reforms, including PAYGO in various forms, sunset provisions, requiring hearings, requiring authorization legislation, any number of these things. They are all reasonable for a topic of discussion, and I think that this is one.

Mr. NEAL. How about a 3-day layover on conference reports?

Mr. TOOMEY. There is a very long list of very reasonable ideas. We happen to think this is one very such reasonable idea that could help us do a better job getting spending under control, not the only one. Frankly, we support all of the proposals that Congressman Ryan and some of his colleagues have proposed by way of budget process reform. This is not a panacea, but we think it is a very constructive step in the right direction.

Mr. NEAL. But there is general agreement that the Congress currently possesses the tools to balance the budget.

Mr. TOOMEY. Sure.

Mr. NEAL. Thank you.

Mr. RYAN. The gentleman's time has expired.

At this time, we will recognize Mr. Conaway.

Mr. CONAWAY. Thank you, Mr. Chairman. Thank the panel for being here.

Certainly we have got the tools, but I don't know whether we have got the will to do it. Anybody that can read or actually stay within lines—this is a chart David Walker gave us this morning. We have all seen it. Growth in this Federal Government over the next 40, 50 years, which is the single biggest threat to our life, our grandchildren's way of life. I have got an 8-year-old that will be in this position in 2050. When left unchecked, this Federal Government will soak up about 50 percent of GDP, and he will have to figure out how to live and prosper on the other half.

It is also kind of like the fellow that fell off the 10-story building. As he passed the fifth floor, he said, wow, so far, so good. So far, so good.

Last year, or, actually, earlier this year, we passed the Deficit Reduction Act, which trimmed mandatory spending by some \$37 billion, I guess. We proposed a much bigger number in the House.

The Senate whittled it down. The rhetoric on both sides was overdone. Our side bragged way too much; the other side cried disaster way too much.

The truth of the matter is that modest attempt to changing mandatory spending would have less than a half a percent affect on these numbers. Maybe \$29 billion this year doesn't have an effect, but given how hard it is to make even modest changes to spending in this Federal Government, where is the biggest bang for our buck in terms of—there is going to be screaming and hollering from both sides about trying to get it done and trying to create this political will to use those tools to rein all this stuff in. Where is our biggest bang for our buck?

We can't go through the rhetoric we went through last year for only \$36 billion and keep the thing working and have a meaningful impact on these numbers. Anybody, where would be the biggest bang for our buck in terms of relooking at how the Federal Government spends money?

Mr. SCHATZ. If I may, one of the proposals that has been used at the State level—and I don't want to get into a long discussion of tax and expenditure limitations, but that is one concept, to strictly limit overall the amount of increase in the growth of the Federal Government.

Any organization that needs to look at its bottom line picks a number somewhere that makes sense and says we will spend 3 percent more than the current year, we will spend at the rate of inflation, we will increase salaries by 2 percent or 3 percent or whatever it is. And it is interesting, because Congress increases the salaries of Federal workers at a certain rate, but then everything else goes up far more than that. Well, tie wage increases to spending increases.

So if you set—this would go across the board—a limit of some kind, that would help address this growth that we see in all of these programs; and it would force Congress to make more of the choices that we think they should be making now.

Mr. TOOMEY. If I could briefly respond, I think you have observed yourself in the long run if we don't address the big entitlement programs, then the rest is fiddling around the edges. However, from my 6 years in the House, I learned one thing early on which is sometimes we have to settle for very, very modest victories and you make very incremental progress.

So if we can make this incremental improvement, what I see is an improvement in the budget process, spending process, and maybe change the culture of spending a little bit by putting greater scrutiny behind some of these projects, maybe we are taking a small step in a long journey to get this budget under control.

Mr. HORNEY. If I may, I think the key thing is what I have learned about budget process over the years, and I think it is very important, the process is not good at forcing the Congress and the President to do things they haven't decided are worth doing. So what you really want to do is work on getting the will; and then, once you do that, budget procedures can be very useful in enforcing the decisions.

I think that is the lesson from 1990 where the President, the Congress, Republicans, and Democrats got together. The first thing

they did was make changes in policy. They increased revenues, cut spending. They did it together; and then they put in place the PAYGO rules and the statutory caps on discretionary spending that helped enforce that agreement. It wasn't the other way around. They didn't change the rules and then go and come to the policy decisions.

I think trying to achieve the results through process rules like overall spending limitations can be difficult; and I think the experience of the one State that has really tried that, Colorado, after several years of doing it, as a result of things that happened, what happened in the State, they have suspended it.

So I think there are some real questions about whether things like that work; and what you really need to do is what David Walker is trying to do, the Concord Coalition and others, is get the public and lawmakers to realize what needs to be done.

Mr. LORENZEN. I would concur for the most part with what Jim said about budget enforcement, trying to enforce policy decisions.

The one additional place for the budget process is to bring greater transparency and at least force accountability. So if spending were to go above certain levels or revenues above certain levels, I don't think the process could dictate the outcome, but it could potentially at least require an acknowledgment and a discussion of that. And the policy outcome may be the one that the Concord Coalition might like, may not, but at least that debate and recognition of an issue and consideration of it.

Mr. RYAN. At this time, I would like to recognize Mr. Baird.

Mr. BAIRD. Thank you, Mr. Chairman; and thanks to the witnesses. This is a very important and fascinating topic, and I appreciate you raising the issue.

A word about transparency. I think Mr. Neal mentioned the 3-day layover. That is already in the House rules, but we waive it with alacrity. I have introduced a bill, 72-hour rule, which would require 72-hour barring two-thirds majority vote and with exceptions for emergencies, et cetera.

By the way, it also provides not only that we have 72 hours to look at bills, but so would you. Bills would have to be made available on the Internet. I think that would actually go a fairly long way toward shining the light of day on frivolous or egregious abuses of the earmark system.

I also want to commend you. Because one of the problems we face, one of the reasons people don't seem to read bills is what we do, as we all know, is go down on an appropriation bill that we have had 6 hours to read and we don't say what is the broad sweep of this bill. Instead, we say, is my project in it? It is a little bit like asking Santa, did I get what I asked for? And if Santa says yes, then you love Santa, regardless of who else gets what in the bag. It is not a very good way to run a government.

Having said that, I am not sure the alternative is good, and I want to play around with this. So if we don't put the earmarks, we who represent the districts—and I would warrant that I know my district a good bit better than the President of the United States who has never been there. If we don't put them in, how is the money spent? Is it not going to be spent by a bureaucrat and are they not then subject to their own political agendas?

I sincerely would be interested in answers to that.

Mr. SCHATZ. If I may, and this is part of our All About Pork Report, and among other pieces I have read about this. I find it interesting that Members of Congress talk about these nameless, faceless bureaucrats that make these decisions, where, in fact, they give that authority through legislation.

So it seems to me that you, in some cases, have it both ways in some particular project and programs. For example, the Save America's Treasures Program under the National Park Service got \$15 million, totally competitive, Department of Interior, went into the appropriations bill. The Appropriations Committee added \$16,750,000, all earmarked.

So, clearly, someone thought that this project should have more money, this program should have more money but somehow didn't trust the same people they had already entrusted to make the initial decisions with all of the decisions. So I don't see how it can be done both ways.

In terms of what the decisions are and how the decisions are made, if Congress doesn't like how they are being made, they can change the law, they can change how these grants are made, and they can change the process. But I don't think it is fair to say you want to have it both ways.

Mr. BAIRD. Let me ask this question, and I appreciate the point you just made. That would seem to argue for me legitimately to make a case against earmarks per se. But I am not sure that then is an argument in favor of the rescission authority for the President.

Mr. SCHATZ. If you have earmarks and they are being added on in ways that are noncompetitive and without hearings, then someone has to at least point that out and force Congress to vote separately on those items. Because in the appropriations bills you don't have that opportunity, at least not right now.

Now if the earmark reforms were done in a way that there would be a greater opportunity for amendments to be offered on the floor, and certainly a lot of Members, including some who are here, are trying to do that, that might make it a little bit less important for a line-item veto. But I still think at the back end there is always going to be something we would like to see being brought back to the floor for consideration.

Mr. TOOMEY. I would like to add one thought.

Mr. BAIRD. I want to get an alternative view.

Mr. TOOMEY. Sure. I would suggest that the alternative to having fewer earmarks on the part of Members of Congress is not necessarily that bureaucrats would do them instead. It is possible that they could be discontinued.

Mr. BAIRD. No.

Mr. TOOMEY. I think in some cases it is pretty clear that earmarks are used to get funding for something that really wouldn't be able to withstand the scrutiny of a normal process of hearings, consideration, authorization, a vote on the floor on a free-standing measure. It wouldn't pass the giggle test sometimes.

Mr. BAIRD. If I may, I appreciate the point.

Mr. HORNEY. I think, in earmarks, it is hard. I think there is nothing evil about earmarks. A lot of the ones—for instance, look

at the foreign operations bill. It is filled with earmarks. But that is because Congress thinks it is appropriate for Congress to decide how much money goes to Israel, how much to Egypt, and so on.

There is a balance. What I think is really key is to realize the line-item veto is not even close to being limited to earmarks. We are talking about much broader power than that. The President could ignore every earmark in an appropriation bill and instead to propose to eliminate the 91 programs that the President proposed to eliminate in his budget this last year.

So if you want to get at earmarks, and I think you need to be careful about how you do that, the line-item veto is much broader and sort of a blunt tool to do that.

Mr. BAIRD. I appreciate the response on both sides of this. Thank you, Mr. Chairman.

Mr. RYAN. Mr. Cuellar.

Mr. CUELLAR. Thank you very much, Mr. Ryan. Thank you for taking the leadership on this particular issue. I know this is an issue that Mr. Spratt and some of the folks who have been here before have been working on; and I do appreciate—to the witnesses, I appreciate your comments.

I think we all understand the great magnitude of facing the fiscal challenges that we have. Of course, all of us are looking at the different tools that are available to improve accountability in the budgetary process; and, of course, I think the end result is to get greater public confidence in the work that we do here in the budgetary process.

I think if you look at the different budgetary tools, there is a lot of them out there on the table, some of them already in law, some of them have been debated already and been ruled unconstitutional, and some of them are still going to be considered, like we are today. But I think we all have an obligation to consider and debate the different tools, budgetary tools that are out there.

No. 1, PAYGO, the 1974 Empowerment Control Act, Sunset Commission, Performance-based Budget Team, that is legislative oversight, a modified line-item veto, these are different tools out there.

In my State, for example, in Texas, we have the following budget tools, and I support tools like this: PAYGO, I support that; Sunset Commission, I support that; Performance-based Budget Team; Legislative Oversight, I definitely support that; line-item veto, I support that, and in fact I am a cosponsor with Mr. Ryan here.

What I ask is the witnesses to work with us so we can fine-tune this particular tool; and today, of course, we are talking about the line-item veto. I do understand—I think Mr. Spratt is correct on this—any time you propose something, you will have little challenges. New challenges will arise where—I call it sparring between the executive branch and the legislative branch.

For example, if you are talking about line-item veto what is going to happen is Congress will find a way to try to design a bill so it doesn't become line-item veto; and you will have conversations between individual Members and the President. Look, we will work with you on this one if you don't line-item veto our thing. But I think that is part of the process.

The only thing I do ask is that you work with us to fine-tune the legislation. Because, again, we didn't invent this. There has been—

43 other States have gone through this, other Members of Congress went through this, and what we ask you is to just help us fine-tune this legislation to make it as best a product as possible. Nothing is perfect.

I am a big believer of putting the tools out there, consider them, debate them, and then see what we can do to work, and understanding that there will be sparring between the legislative and oversight.

I am a cosponsor of this legislation. I do want to fine-tune it, but I still believe that the will is so important, the legislative will is so important and legislative oversight. I think that is the most basic things that I think we always talk about, but we need to do more to provide oversight.

Pat, any of you, if you have any thought on this, I would be happy to work with you, along with the other members.

Mr. TOOMEY. I would just very briefly say that we agree there is a very wide range of tools that are available for the budget process. We support many, many of the reforms. We think this is a great start, a great idea; and we look forward to working with you and other members of the committee in the hopes of refining it so that it can pass and be effective.

Mr. SCHATZ. We are happy to contribute as well.

Again, I think there are plenty of individuals—and my understanding is with the next hearing you will be listening to some of them—with the constitutional background to also address some of the issues related to this legislation.

Mr. LORENZEN. In my testimony, I raise several issues for consideration. A couple I would bring to your attention is ensuring that all the savings go to deficit reduction, including savings from rescinding a tax cut or entitlements, and, obviously, the issue that has been discussed about the release of funds and how long the President can defer funds and striking the balance between ensuring the funds are spent with the will of Congress while ensuring that the money isn't spent until Congress has acted.

Mr. HORNEY. While our preference would be that no bill is enacted, we have made suggestions about the way it can be improved, and we have talked with House and Senate staffs about those things, and we will continue to do that.

Mr. CUELLAR. Mr. Ryan, again, as one of your cosponsors, I hope you work with us on fine-tuning this legislation. There is no Republican way, there is no Democratic way, but if you can work with Mr. Spratt and some of the other Members, I think this is a good piece of legislation, and if we can tinker this—fine-tune, not tinker—fine-tune it, I would appreciate your consideration.

Mr. RYAN. I couldn't agree more.

We were sitting here talking about ways of fine-tuning it back here. The deferral issue is an important one, and my intention is not to give the President any more undue power. At the same time, we have got Chada issues, constitutional issues that we have to make sure we accommodate; and we also have to make sure that Congress can't run out the clock with the recess beyond the deferral.

So it is not as easy as it seems at first, but, absolutely, my full intention is to fine-tune this legislation to address these very valid

concerns, some of which Mr. Horney brought up, I think each witness brought up, and Mr. Spratt brought up. So I look forward to doing that.

At this time, I recognize Mr. Cooper.

Mr. COOPER. Thank you, Mr. Chairman.

I, too, am a cosponsor of your legislation but a reluctant cosponsor. I think the record should show that I believe you are the only Republican on the committee who is in the room right now, and that has been true for some time, so I wish you could muster more interest in this hearing on your side of the aisle.

I think what we have here—as was said in the movie *Cool Hand Luke*, what we have here is a failure to communicate, not necessarily among so-called experts but with the American people. So, with your indulgence, let me put the cookies on a real low shelf.

The President already has tremendous power to cut spending and yet, as the Cato Institute and the Heritage Foundation have demonstrated, government has grown more dramatically than at any time since Lyndon Johnson and probably exceeding LBJ himself and the Great Society.

So what has the President done with his cutting tools?

He has got the chain saw of a real constitutional veto. He has never used it, the longest-serving President since Thomas Jefferson never to use it.

He has also got a smaller tool, something like scissors, that every President since Richard Nixon has had. He has really never used that either, even though every President back to Nixon has used it hundreds of times.

Now this whole hearing is about hedge clippers, some sort of intermediate tool that he probably should have, and we are debating the fine point of hedge clippers. Meanwhile, he has never used the chain saw or the scissors.

And you and I both know, while an intermediate tool might be helpful, if you have never tried the bigger tools or smaller tool, he hasn't even approached the intermediate problem that we are addressing here today.

So I would suggest what we have here today is not a tool problem, it is a timidity problem. So probably we shouldn't be having a hearing about line-item veto, it should be more on the subject of Levitra. Probably shouldn't talk about constitutionality, maybe more Cialis. We probably need Viagra to stop the Niagara of spending and promises that are being made. Because it is a willpower problem. It is something more than a chain saw or scissors or hedge clipper problem.

Mr. SPRATT. Mrs. Capps is blushing.

Mr. COOPER. I told you it would be a real low shelf.

As the Comptroller General has testified to us, the cost of delay in addressing these problems is extraordinary. It is far more than even Members of Congress can imagine. It approaches \$3 trillion a year. Now we will work less this year than any Congress since 1948, and the problem will be \$3 trillion worse when people regain their resolve next January.

I am worried that, as convenient as it is for some of these groups to raise money off of this new issue, this recycled issue, this bang the drum slowly issue of line-item veto, we should be focusing on

more immediate action because it is a dangerous debate that diverts attention from our real problems and why we aren't using the chain saw or the scissors.

Now let me remind you I am for the hedge clippers, but it is a lot like asking us in Congress, stop us before we spend again. Look at the appropriations bills we have just gone through. Look at how few votes the Flake amendments have received. All they would do is ask us to live up to the transparency and disclosure requirements that most all of us voted for in the earlier lobbying reform bill.

We are not taking action, nor is the White House taking action. That is why I am a reluctant cosponsor. Because we are debating the fine points and the niceties. Meanwhile, the problem is getting worse every day, every week, every month to the tune of \$3 trillion a year; and we are jawboning about intermediate tools. It is a will-power problem; and, hopefully, with clearer communication, folks back home can understand how to give us more backbone. Because that is what it boils down to.

Forgive me, Mr. Chairman, for the statement and for my reluctance in cosponsoring your fine measure, but that is where I think the communication needs to go on.

If any witness would like to make a comment, I would be happy to hear you.

Mr. SCHATZ. Certainly the idea of the President not using his veto has been prominently used by our organization and I know by Mr. Toomey's as well. We are not reluctant critics of the lack of fiscal discipline on both sides of the aisle. So I would like to just make that point. In fact, we have been disappointed by the fact that spending has grown so much; and it wouldn't have mattered under whom that occurred.

One quick comment totally off what you had said but what Mr. Horney said about foreign aid. I don't think that the line-item veto will be looking at the Israeli or Egyptian appropriations. I think they are looking at the \$13-1/2 million for the International Fund for Ireland which this year included plans to fund the World Toilet Summit.

Mr. NEAL. Might I respond?

Mr. RYAN. It is Mrs. Capps' turn next. Maybe she can yield to you. I want to keep it clean on time. Let me recognize Mrs. Capps. It is her turn.

Mrs. CAPPS. I would like my time, but I would also want to yield to Mr. Neal.

Mr. NEAL. Thank you.

Mr. Schatz, you do a disservice to the Ireland Fund when you don't point out the success that it has had by singling out one part of the Ireland Fund that you disagree with. The border counties of Ireland, beginning in Dundalk and moving all through the north, have had an experience that is unparalleled with the help of American foreign policy. In fact, if every achievement in American foreign policy came close to what has happened in Ireland over the last decade, we would all be standing here with a round of applause.

The Ireland Fund has worked quite well, despite the single issue that you raise. It has been an extraordinary success in those border

counties. Members of the Protestant community, members of the Catholic community herald it, as well as the European Union and Australia. They all participate.

Mr. RYAN. This is when you get someone who is Irish up—as an Irishman.

Mrs. CAPPS. Is it time for me to reclaim my time?

I also just have to say to Mr. Spratt, the mention of chain saws always makes me blush. I know all the quotable quotes have been said, and I am kind of doing cleanup.

Mr. Conaway left, but he sort of yielded the fact that there is tremendous lack of will both in the leadership in the administration and also in the House now to—which is quite a statement—to do anything about balancing the budget.

Another quote comes from “USA Today” editorializing that the line-item veto is a convenient distraction, that the deficit is caused primarily by an unwillingness to make hard choices on benefit programs or to levy the taxes to pay for the true cost of government.

I would like—that admission of failure on the other side—I could say, in a partisan way, the Democrats would like a chance to balance the budget. And I didn’t serve here then, so I can’t take credit for what happened in the ’90s. I came in at the end of it. But I want to use my time or let you use my time to illustrate for me what happened in the ’90s that made it work.

But, before I do, I think there are two elephants in this room that I haven’t heard mentioned today. I just want to put them out there. Elephants is a good symbol. One is the war cost and the other is the huge tax cuts. These have got to have something to do with our deficit.

I also want to make one other point—I am hoping I am going to hear in your comments that there should be an effort in a bipartisan way to deal with this.

But, we have a Speaker now who says he is looking for a majority of the majority to make decisions. A classic example is what happens in my years of serving honorably under the good leadership on this committee. I can count only three or four bipartisan amendments that were voted on in a bipartisan way in this process of drafting a budget.

Mr. Horney, you sort of put your finger up first.

Mr. HORNEY. If I could, I think that we have a serious long-term problem, no question about that, very serious. What needs to be done, the only way it is going to be dealt with is when Republicans, Democrats, the President, Congress come together and look at everything, put everything on the table and consider everything.

That is exactly what happened in 1990 when the current President’s father worked together with congressional Democrats and Republicans. I was on the House Budget Committee staff at that point. I was out at Andrews Air Force Base for part of that time. A lot of people say that was a terrible experience, but, in fact, it was an incredible experience of people saying we think we have got an important problem, and that means giving up some things I care about.

Democrats were not eager to cut Medicare, but they said, in order to get deficit reduction, I will do it. Republicans were not eager to raise taxes but said we are willing to do it in order to re-

duce the deficit. They put together a package with bipartisan support, President and Congress, that reduced the deficit by \$500 billion over 5 years and set the stage—it didn't by itself achieve the balanced budget, but it certainly had an important effect.

Mrs. CAPPS. Do you think a bipartisan coming together is essential to this process?

Mr. HORNEY. I don't see how it can be done otherwise. Because when you are dealing with Medicare, Medicaid, Social Security and taxes, it has got to be a combination of reductions in those programs and increases in revenues. I don't see how either party can do those things by themselves.

Mrs. CAPPS. Would any of the others like to comment?

Mr. LORENZEN. I agree with everything Jim said about the need for everything to be on the table and making tradeoffs, that we are never going to be able to balance the budget by cutting everyone else's priorities; and I think bipartisanship is necessary to assure that any agreements are sustained so you don't have the tough choice made for deficit reduction reversed as soon as the other party is in power.

I think in the 1990s the other key was that there was a bipartisan consensus that deficits mattered, were a problem, and a bipartisan consensus we should achieve a balanced budget. There were differences about how to achieve that, but when you started with that goal, that it was the goal we wished to achieve, that was able to focus the discussion in a way that we have lost in recent years. Once you have that political will and put everything on the table, then you can have the type of discussions; and that is where budget enforcement tools such as PAYGO and discretionary caps and others can help enforce and further that will.

Mr. TOOMEY. I would like to address, if I could, very briefly. We strongly disagree that the main reason we need to get spending under control is because of the size of the current deficit.

First of all, it is less than 3 percent of GDP, that is a modest level.

More importantly, if the deficit as it is today were a serious problem for the economy, everybody acknowledges it would manifest itself in high interest rates, which we don't have. We have extremely low interest rates.

The last point I would make is, you mention the tax cuts, and I think it is indisputable that, at least if you dispute the cause and effect, you can't dispute the fact that since the tax cuts there has been a tremendous, robust and broad and sustained economic recovery; and revenue to the Treasury has grown and is at an all-time record high.

I wouldn't suggest that raising taxes is in any way a good solution to the deficit program.

Mrs. CAPPS. Would you agree that there was a burst in the economy in the '90s as well?

Mr. TOOMEY. Absolutely.

Mrs. CAPPS. So there might be some correlation.

Mr. TOOMEY. There was a whole different set of factors that were going on then.

Mrs. CAPPS. I have one further question. You said that deficits don't matter to the economy. Would you agree—did I quote you right?

Mr. TOOMEY. What I am saying, the deficit at the current size is not a constraint on economic growth.

Mrs. CAPPS. Would you share my concern that the trend might be significant economically? And, also, would you think there might be other considerations besides the economy that would be important to consider with our deficit?

Mr. TOOMEY. First, the entitlement programs are unsustainable; and they would lead to deficits that are unmanageable. I will acknowledge that.

But I think the main reason to focus on the deficit is if you believe it causes economic problem. If there is no economic problem because it is so small, and it could well be that it is that small at the moment, then I would say certainly don't raise taxes to deal with something that is not an economic problem.

Mrs. CAPPS. I am going way over my time. I have a naive question to ask. Why do we never consider the war cost when we talk about budget?

Mr. TOOMEY. Well, we do. Our organization doesn't get into foreign policy matters, but we acknowledge it is very expensive. War is always very expensive. We think, frankly, that, given the costs of the war, it creates an even greater need to have fiscal discipline on the discretionary and the domestic side of spending.

Mr. SCHATZ. Mrs. Capps, we would actually like to see offsets to pay for the cost of the war. This was done in the Korean War and—

Mrs. CAPPS. Do you think we should do that now?

Mr. SCHATZ. We object to these supplemental appropriations with offsets. I know Mr. Ryan and others have tried to offset the non-defense part, but it seems an interesting way to fund something you know you are going to spend money on because it frees up money to do things we may not necessarily need in other areas.

Mrs. CAPPS. It also precludes some oversight.

Mr. RYAN. If the gentlelady will yield, because you are the last speaker. We did put \$50 billion in the budget. Now as a down payment on the next supplemental, I will be the first to tell you I don't think that is enough, but there was an attempt to try and acknowledge, at least in our baseline and our deficit projections, the cost of the war. I agree with Mr. Schatz. We should be seeking offsets for these things.

Mrs. CAPPS. For the cost of the war?

Mr. RYAN. I would love to cut the spending to pay for the war. I am not going to win on that point. We have attempted to offset the nonwar spending, and we have made some success on that.

But I just wanted to make a point to you, which is the budget resolution that just passed has \$50 billion in it as a down payment on the next war supplemental, so there is a recognition in the budget that the war will cost money. The administration never acknowledged that until, I think, this year. I think OMB put it in their submission. So we in the House have been recognizing that a lot longer than OMB has.

Mrs. CAPPS. Let me ask, why is it that we want to offset the cost of the war with cuts to Medicare and Medicaid?

Mr. RYAN. Who said we are cutting those to pay for the war?

Mrs. CAPPS. Are there no other choices to pay for a war? Where is the sacrifice?

Mr. RYAN. Well, I don't think anybody said cut Medicare and Medicaid. We have not cut them. We have only restrained the increase in spending on Medicare and Medicaid. So we have not been cutting Medicare and Medicaid.

Let's stick with the topic at hand. I want to keep order here.

Let me stop with this. I want to thank the witnesses for coming and presenting very articulate testimony. I think each of you raise a lot of insight into this issue. I think each of you raised some of the issues we are dealing with, which is a deferral authority, bundling duplicative submissions, all very important issues that we have to grapple with; and, yes, I think that there is some improvement in the fine-tuning area that needs to happen.

I see Mr. Cooper.

Let me just say two reasons why we are doing this and why we are talking about this.

No. 1, this bill introduces a new element of transparency and scrutiny at the very stage in the process where it is lacking. Provisions which typically have not faced scrutiny hearings or good legislative oversight make it into the bills at the conference stage. Members of Congress have one choice, vote for or against the entire conference report. Oftentimes, you will find you want to vote for a bill because of other meritorious things like veterans, health care or something like that; and so, therefore, you are forced to vote for other things that are wasteful, unnecessary spending that haven't gone through committee process.

The President has the same decision. Yes, it is a chainsaw.

So let's take a veterans bill. The President can either sign it into law and get important things done like veterans health care or take a chainsaw and veto the entire bill because there are parts of it that never went through congressional scrutiny, never went through hearings, and are wasteful spending.

I think we need to change the culture of the way we spend money here. This will not balance the budget, but this tool will bring more transparency, more scrutiny, more accountability at the very stage in the spending process where it is so lacking. That I think will help change the culture of spending here in Congress so we can get on to the bigger picture, get on to the bigger things, change our culture and talk to each other about how to actually balance a budget and, yes, prepare for the retirement of the Baby Boom generation which we are so ill-prepared for.

I will control the time right now and then yield. Mr. Cooper raised his hand first.

Mr. COOPER. Thank you, Mr. Chairman.

I just wanted to ask Mr. Toomey because I think he said in response to Mrs. Capps a couple of times that deficits at the current level don't pose an overwhelming threat. I would just like to ask Mr. Toomey to speculate, what about deficits that were twice as large as those you acknowledge today?

Mr. TOOMEY. It is hard to say on precisely what level the markets would start to say this is not sustainable and we need higher interest rates. I think the right way to look at this is not in absolute dollar terms but in terms of percentage of GDP.

Mr. COOPER. I agree. Right now, it is 2.6 percent. What if it were 6.2 percent?

Mr. TOOMEY. I think it is fair to say, based on other historical facts, if it looked like it would be sustained at that level, that would start to probably become problematic.

Mr. COOPER. If it starts becoming a problem at the doubling level, what would it be like if it were 10 times larger?

Mr. TOOMEY. I think it would be a very serious problem.

Mr. COOPER. Let me point out to you that the U.S. Department of Treasury issued a report in December of last year that said the real U.S. deficit wasn't \$319 billion for the year 2005, it was \$760 billion, or 6.2 percent of GDP; and it seems to be climbing, according to that analysis. So you would indicate that would start being a problem.

Mr. TOOMEY. The analysis includes really the way the counting occurs for the big entitlement programs.

Mr. COOPER. Social Security and Medicare. It does include Civil Service retirement and some veterans benefits, but it completely excludes Social Security and Medicare. If you add those in, according to Harvard Law School Professor Howell Jackson, the 1-year deficit for America for 2005 was \$3.3 trillion, or 10 times larger than the acknowledged figure of \$319 billion.

Mr. TOOMEY. I would simply suggest that what we choose to acknowledge and how we describe it and whether we include the unfunded mandates and the accrual of those liabilities, when the entitlement programs—that matters much less than the real-world observation of the marketplace and the judgment the market makes on the sustainability. Right now, the market is saying what we are currently doing is sustainable to the extent that 30-year bonds have 5 percent yields.

Mr. RYAN. We are going way beyond line-item veto. You guys can have this conversation another time over in the corner if you want to. I want to just keep order here.

Mr. Spratt has asked to be recognized, and at this time let me recognize Mr. Spratt.

Mr. SPRATT. Mr. Chairman, let me make an observation in light of what you said a minute ago.

As I sat here listening, I was trying to discern what is our purpose. Is it to reduce, if not wipe out, the deficit? Is it to deal with this thing called earmarking? Or is it some other purpose? What is our objective here?

What you suggest is, no, we probably won't do much more than dent the deficit at best. We might be able to control a bit of spending, but mainly it is to change the culture of this place. If that is our objective, then I think it probably ought to start here.

The reforms we are focusing on should be more internal reforms, as opposed to going to the White House and have the White House superimposed upon our processes. Let's look around here.

Let's be honest with ourselves. One of the problems we have with devising any truly strong budget controls is that we have some-

thing called the Rules Committee, which has almost unbridled authority when it comes to mowing down most of the barriers that we would put in place simply by overriding points of order and things of that nature.

So if that is the objective—and I think you probably put it right, that should be the objective—then let's go at it from that point of view and deal internally with this institution, clean out our own closet before we go downtown and ask the President——

Mr. RYAN. Let me reclaim time and summarize, just give you one example of how the Rules Committee did not waive points of order.

Last week, we had a military quality of life bill which left unprotected \$500 million in spending that occurred above the 302(b). Mr. Hensarling went to the floor with six points of order which were unprotected which were allowed in the rule and knocked that spending out.

So the Rules Committee did not wipe this away. The Rules Committee allowed a Member of Congress, any Member of Congress, to go to the floor and literally wipe out \$500 million in spending just last week.

So I have would say that there are some positive developments in the culture around here. This would be yet another positive development in bringing more scrutiny, transparency and accountability to the budget process precisely at the stage where it lacks.

Let me just conclude by thanking our witnesses for coming. I am just going to adjourn the hearing, and we can talk in a minute. Because we are way past the time we had planned on it. So I want to thank the witnesses for coming.

This hearing is adjourned.

[Whereupon, at 11:46 a.m., the committee was adjourned.]

